United States Court of Appeals for the Second Circuit

APPENDIX

77-7037

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In The

United States Court of Appeals

For The Second Circuit

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NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
FILED
AUG 8 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX - VOLUME 4

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PAGINATION AS IN ORIGINAL COPY

Ford (Relating to Retail Divisions, Subsidiaries and Financed Dealerships), dated July 19, 1974,

which descriptions are hereby incorporated by reference herein.

Dated: New York, New York
August 22, 1974

Carl E. Person

CARL E. PERSON

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TO: All Defendants' Counsel.

SCHEDULE A

Name of Officer or Employee of GM or GMAC to Testify on Behalf of GM or GMAC	Date and Time
Frederic G. Donner, Chairman of the Board	September 11, 1974 10:00 a.m.
James M. Roche, President	September 11, 1974 2:00 p.m.
Edward N. Cole, President	September 12, 1974 10:00 a.m.
R. M. O'Connor, GM Chevrolet Division	September 12, 1974 2:00 p.m.
Edward P. Belcher, Staff Assistant, Office of Chairman	September 13, 1974 10:00 a.m.
Peter Williamson, Staff Assistant Office of Chairman	September 13, 1974 2:00 p.m.
A. T. Olsen, Director, Fleet and Governmental Sales Section	September 16, 1974 10:00 a.m.
John Rock, Director, Fleet and Governmental Sales Section	September 16, 1974 2:00 p.m.
R. L. Berg, Director, Rental/Leasing and Commercial Sales, Fleet and Governmental Sales Section	September 17, 1974 10:00 a.m.
H. P. Sattler, Detroit	September 17, 1974 2:00 p.m.
R. D. Coulter, Manager, Organization and Analysis Department (Pontiac, Michigan)	September 18, 1974 10:00 a.m.
C. R. Frink	September 18, 1974 2:00 p.m.
H. E. Crawford	September 19, 1974 10:00 a.m.
Emmett P. Feely	September 19, 1974 2:00 p.m.
R. Lee Courtney, Assistant Manager Fleet Sales Department	September 23, 1974 10:00 a.m.
J. J. Owens	September 23, 1974 2:00 p.m.

SCHEDULE A (Continued)

Name of Officer or Employee of GM or GMAC to Testify on Behalf of GM or GMAC	Date and Time
E. D. Foley, Sales Section, Detroit	September 24 1974 10:00 a.m.
S. G. Gilliatt, GM Sales Section, Detroit	September 24, 1974 2:00 p.m.
Albert E. Collier, National Distribution Manager for Cadillac Division	September 25, 1974 10:00 a.m.
Paul E. Swoboda	September 25, 1974 2:00 p.m.
P. J. Wetzel of GM Public Relations Staff, New York City	September 26, 1974 10:00 a.m.
D. M. Fogg, Chevrolet Motor Division	September 26, 1974 2:00 p.m.
N. M. Karney, New York Regional Director, Fleet Section	September 27, 1974 10:00 a.m.
Robert M. DiSimone, Regional Director Fleet and Governmental Sales Section	September 27 1974 2:00 p.m.
Ken C. Womack, Buffalo Zone Manager	October 1, 1974 10:00 a.m.
Mr. English, Buffalo Chevrolet Zone	October 1, 1974 2:00 p.m.
R. W. Redmond, Buffalo Zone Service and Parts Manager	October 2, 1974 10:00 a.m.
Walter J. Englert, Fleet Sales, Midtown Chevrolet, New York, NY	October 2, 1974 2:00 p.m.

THE COURT: Are there any applications?

MR. KLEINBARD: Yes, your Honor, GM and GMAC has an application to which I would like to address myself for a moment or two with your Honor's permission.

THE COURT: Yes.

MR. KLEINBARD: We are raising four subjects all arising out of plaintiff's notice to take deposition -- to take the deposition of 29 GM and GMAC witnesses.

THE COURT: Do you have the notices?

MR. KLEINBARD: Yes, I do, your Honor.

These depositions are to be taken on a two-a-day basis, beginning with Wednesday of this week, September 11, and continuing until October 2 and they are the first 28 out of some 97 witnesses, which the plaintiffs propose to depose out of GM and GMAC.

The first subject I would like to address myself to is the scheduling and the subject matter of the depositions of Messrs Donner, Roche and Cole, who are the first three witnesses that the plaintiff proposes to depose.

As I am sure your Honor probably knows, Mr. Donne is retired from the company. He was formerly the chairman of the board.

THE COURT: When did he retire?

MR. KLEINBARD: Several years ago, your Honor. More than five years ago, I think, and he has retired as a director this year. It is either four or five years ago, I don't remember. I was at the meeting at which he retired, though I don't recall when, and he is an individual defendant in this case.

Mr. Roche was also formerly chairman of the board of General Motors. He is a director of General Motors and is an individual defendant.

Mr. Cole is currently finishing his term as president this very month of General Motors, and is not a defendant in the action.

Of course, this being his final month as president of the corporation, he is obviously preoccupied in winding up his particular duties.

THE COURT: It might help, or it might not be curcial to get a chronology. Mr. Donner, was he formerly president and then did he become chairman of the board?

MR. KLEINBARD: I think the progression is normally president then chairman of the board. I know that was true of Mr. Roche.

THE COURT: Anybody tell me when he was president?

MR. KLEINBARD: I cannot tell you when he was president.

THE COURT: Do you know, Mr. Person?

MR. PERSON: I do not. I believe he was chairman rge in '67.

MR. KLEINBARD: That sounds about right to me but I couldn't swear to it.

MR. KAPLAN: Mr. Donner retired as chairman on October 31, 1967 and Mr. Roche retired as --

THE COURT: October 31, 1967 was the retirement of Mr. Donner as chairman of the board.

MR. KAPLAN: Correct.

THE COURT: Would you be able to estimate how long he was chairman of the board before that?

MR. KLEINBARD: He certainly served for several years and of course NABCOR has only been in business since 1966, so he was certainly chairman during a portionof that time and I think it would be sufficient for our purposes.

THE COURT: Then let's go to Mr. Roche.

MR. KAPLAN: Mr. Roche retired as either president or chairman, I don't recall which --

MR. KLEINBARD: I believe chairman.

MR. KAPLAN: On December 31, 1971.

THE COURT: Did he succeed Mr. Donner?

MR. KLEINBARD: That is correct.

MR. PERSON: He was president during the time in question.

THE COURT: The time in question may be in questi

MR. PERSON: '66.

THE COURT: Mr. Roche then was chairman of the board from October 31, 1967 or the retirement of Mr. Donner until December 31, 1971. Now, was Mr. Roche president of General Motors prior to October 31, 1967?

MR. KLEINBARD: Correct, and for these purposes we will concede that he was president during the period commencing with NABCOR's opening for business.

THE COURT: Let's go to Mr. Cole.

MR. KLEINBARD: He became president, I believe, upon Mr. Roche's becoming chairman of the board.

THE COURT: So he became president on October 31, 1967.

MR. KLEINBARD: I believe so.

THE COURT: Did he become chairman --

MR. KLEINBARD: No, he did not.

Mr. Gerstenberg is now the chairman.

THE COURT: Is he still president?

MR. KLEINBARD: He is president. He is concluding this month and retiring.

THE COURT: Go ahead.

MR. KLEINBARD: Our problem is this, that the plaintiffs proposed to depose these gentlemen not only on what they know of NABCOR and what actions they may have taken, rge

if any, with respect to NABCOR, but as to general policies of the corporation as to which they also seek to depose the very individuals who are now currently in charge of those programs and who are presumably more currently and better informed.

Just to give you an example, they propose to depose these gentlemen about the fleet programs, although they seek to take the deposition of a Mr. Karney who is currently in charge of fleet programs and could give them all the information that they desire.

We are perfectly willing to provide --

THE COURT: What's that name?

MR. KLEINBARD: Karney.

We are perfectly willing to provide them with anybody that is required to answer any of the questions which they desire and if upon the conclusion of those depositions they still find it necessary to take the depositions of Messrs Roche, Donner and Cole, we are perfectly willing to produce them, although we think their depositions ought to be confined to their knowledge of NABCOR or the actions which they took with respect to NABCOR, but if any necessity is demonstrated for going beyond that we would be prepared to go beyond that.

What we are suggesting is that they first proceed with the other people in the company who are active in the company and who are presumably more currently informed about the subject matters of this litigation.

THE COURT: Can I interrupt? It seems to me, and I have not gone over the transcripts, but it is pretty clear in my mind that at a certain point I announced some kind of general guidelines on discovery. I think that occurred at the first meeting we had after I handed down the decision on the defendants summary judgment motions. I said at that time that I would not permit just a rampage of depositions and I was really realisticly afraid of this being proposed.

I think at that time and at subsequent meetings what I tried to set as a course was to have the parties exchange documents as the first step in discovery and then go to interrogatories and depositions, but I was hopeful, and I think this is what I expressed, that the names of necessary witnesses to be deposed would be largely revealed from the documents.

That certainly can happen and it should happen, that the documents disclose the names of the people to be deposed in the first instance. I would think in a case like this that would be true.

MR. PERSON: Your Honor, I have --

THE COURT: Just a moment, please. Obviously it may not be the case and you may be now preparing to announce to me you have found nothing in the documents that gives you any guide as to who to depose, but let me just still persue my hopes.

Wherever the names come from, whether they come from the documents or from some other source, I am going to insist, and I think I have stated this before, that the depositions start with somebody besides the chairman of the board of General Motors. It is so obvious it hardly needs stating that the nature of this case is a very narrow case for reasons which we found by many, many devices; the motions that we have and so forth have shown this case not to be a huge case which needs to go into all the business policies and so forth of General Motors or anything approaching that.

It is a narrow case and I am going to keep it narrow and nobody is going to get it into any broader form than necessary.

I feel that one way to get it out of bounds is to start with the deposition of Frederick J. Donner and you are not going to be able to do it.

Now, you decide what person you can depose about NABCOR. That's where we start, and you are going to have to start with NABCOR, who at General Motors do you have any indication had anything to do about NABCOR?

MR. PERSON: Your Honor, this is a card which I indexed all the documents given by General Motors. I have the names of each of the persons listed in my notice of deposition listed in these cards so that anyone I noticed has a name appearing in these documents.

Mr. Roche appears on documents 654 through 7, 684 and 794 and 5 and that's why I am --

THE COURT: What are those documents and in what connection are they?

MR. PERSON: In connection with NABCOR. It appears that he obtained information that NABCOR was advertising in the newspapers its brokerage system for selling new cars and in June of 1966 several months after my client was informed that was on his desk and he transmitted that information to the chairman of the board of General Motors. These people were involved. The documents show that.

THE COURT: Frankly that doesn't show me very much. I mean, if I were president of General Motors I might get all kinds of information memos on all kinds of subjects from all kinds of subordinates and I might transmit something on to my superior, the chairman of the board.

But that does not mean that I did anything about it. It may be or it may not be that I did anything about it illegally or legally. I don't have the faintest idea at this point. But what do you have in the way of names of people who do something besides have memos cross their desk?

MR. PERSON: We have various people who were involved in terms of the NABCOR deal with automobiles and fleet certificates and the documents purport to be all the documents that there are in that regard.

THE COURT: Who authorized the document about NABCOR that went to Mr. Roche and Mr. Donner?

MR. PERSON: I think that was from a member of their public relations staff in New York. Mr. O'Conner, who was then the head of --

THE COURT: May I see it?

MR. PERSON: (Handed.)

MR. KLEINBARD: Your Honor, I don't want to interrupt you, but I just want to say --

THE COURT: Let me just look at this.

MR. KLEINBARD: I'm sorry.

(Pause.)

THE COURT: Correct me if I am wrong, but it appears there is a memo from a Paul J. Wetzel to a Paul E. Svoboda dated June 7, 1966 and Mr. Wetzel says that he has his attention called to an advertisement in the Business Opportunities classified section of The New York Times about Nabcor and gives some information about NABCOR's operation. Then we have a memo dated June 17, 1966 from E. P. Feely -- incidentally, the June 7 memo was received by Mr. Donner June 7 and Mr. Roche June 9.

It just has received stamps.

Then there is a memo dated June 7 from E. P. Feely to H. E. Crawford. That memo is dated June 17, 1966. It was received by Crawford June 20, 1966 giving information about NABCOR and its operations.

There is a memo from Crawford to Feely dated June 20, 1966, which apparently has some privileged material deleted, but it says "also please note that we are requested to give Mr. Roche a report, thus I feel our information should be as complete as possible."

That was received by a Mr. O'Connor on June 22, 1966.

Then there is a memo from Mr. O'Conner to Mr. Roche dated July 1, 1966 which says "At the suggestion of Mr. H. E. Crawford, I am attaching some information that we obtained relating to the subject company" and I assume it includes all these memos. It was received July 1, 1966 from J. M. Roche.

MR. KLEINBARD: Your Honor?

THE COURT: Okay.

MR. KLEINBARD: What I wanted to say was I think all of these memos have been generated by a letter from Frank Maiorana. I'm sorry, it is not generated, but there is also a letter from Frank Mairoana to Mr. Karney asking why he didn't receive a fleet certificate which reached Mr. Roche's desk.

THE COURT: To whom?

MR. KLEINBARD: To Mr. Karney.

THE COURT: The fleet fellow.

MR. KLEINBARD: It was inquiring basically as to --

THE COURT: What is the date of that letter?

MR. KLEINBARD: That letter is February 9, 1963 and it was sent by Maiorana to Mr. Belcher and to the president and chairman of the board of General Motors.

THE COURT: When did it get to Mr. Roche?

MR. KLEINBARD: It says received February 9, 1968.

THE COURT: So you are talking about a '68 letter?

MR. KLEINBARD: I am saying there is an additional letter from Mr. Maiorana to --

THE COURT: We are backin '66.

MR. KLEINBARD: That's the whole connection so far as documents are concerned.

THE COURT: Do you have any documents, Mr. Person, that indicate any action taken by General Motors aside from passing information about NABCOR around among various persons?

Do you have any minutes, any documents, any memos, anything at all that talk about action taken or to be taken with respect to NABCOR?

MR. PERSON: Yes. We were denied a fleet --

THE COURT: No. What documents have you got and let me see them.

This is, for example, was where --

THE COURT: What's the document number?

MR. PERSON: This is document number 758.

THE COURT: What is that?

MR. PERSON: It is documents 758, 59 through 62. This is a document showing that Midtown Chevrolet, after its acquisition by General Motors --

THE COURT: When was that?

MR. PERSON: In '66, December. At the end of December, maybe January of '67 -- had refused to honor the order of Midtown Chevrolet when it was --

THE COURT: Who refused to honor?

MR. PERSON: The Division Office, General Motors refused to honor --

THE COURT: You mean the Midtown Chevrolet?

MR. PERSON: Division of General Motors after it was acquired by General Motors.

THE COURT: Do you have references to them in there?

MR. PERSON: Walter Engler is there. He was, I believe, and you can correct me, probably the fleet manager for Midtown Chevrolet, a division of General Motors.

THE COURT: Why don't you depose Mr. Engler?

MR. PERSON: I have noticed him.

THE COURT: Do you have any objection to him deposing Mr. Englar?

MR. KLEINBARD: Assuming Mr. Englar is still with the company, no.

MR. KAPLAN: He is.

THE COURT: He can subpoena him, but --

MR. KLEINBARD: I understand. I have no objection to him being deposed as a party or as a witness, depending upon what his status is.

THE COURT: Wouldn't that be a current place to start?

MR. PERSON: It is only one individual. Many activities have taken place, your Honor.

THE COURT: But you might then get some sensible chain. I mean, you have told me something concrete just now. I mean, not just include the theory, but you have said to me that Midtown Chevrolet at a certain point refused to sell cars that were ordered by your client. Now, it would seem to me that is right at the heart of it. That's what you are really complaing about in counts 1 through 3, this is boycott and there is no objection to taking Mr. Englar's testimony and from him you can find out if he was ever directed to do that by anybody at General Motors and who that person was, or those persons were, or if he had any conversations about such topics and so on and so on. Then you begin to find out what happened and you can focus more accurately on the people that may be responsible for what you claim occurred.

MR. PERSON: We know of many other people who were involved and to take one deposition now and hope that the case will still be open so we can take another one after that is really going to drag out the case. I am trying to follow along in accordance with your wishes to expedite it. I know the people who were involved, they are in these documents and that is the only reason why I have chosen them.

THE COURT: I have not seen any evidence in document 964 that we talked about earlier that Mr. Roche or Mr. Donner did anything.

Now, I know, Mr. Person, that that isn't the end of the ball game and I know that whether their actions are or are not disclosed in a document, they may have done something, but I also know that these are people at the top, the very top of a giant corporate structure. I just feel that we are not getting very productive to start in with those people.

MR. PERSON: Mr. Karney was involved --

MR. KLEINBARD: Your Honor, I want to make it clear that with the exception of the three people that I have just mentioned, namely Messrs. Donner, Roche and Cole, we have no objection to any of the others, the 28 witnesses that he has mentioned having their depositions taken, except those who have retired and I would like the notice vacated as to those people, and as to --

THE COURT: Just on the technical ground of no present connection, but I take it you would not object to them being subpoenaed?

MR. KLEINBARD: He can subpoena them and take them through appropriate procedures just as any other witness, but I don't want the corporation examined by them.

Just to give you an illustration as to the terms of the documents that Mr. Person has shown you, for example the one addressed to Mr. Cole, and the only one I know of, has written on it by his administrative assistant "Mr. Cole has not seen this," so that the mere passage of something over somebody's desk is not terribly helpful.

We have two other problems, if I can touch on them briefly, your Honor.

One is the place of the depositions, because these witnesses are not all in one location. The great majority of them are in Detroit and we think that in this circuit at least, it is pretty clear that you examine a corporation at its place of business or where the witness resides. Judge Bonsal of this District, has held that the place of business of General Motors and where its operating control is is in Detroit and we would be glad to produce these people in Detroit at an appropriate date and time and that is some 12 people. It would mean dragging otherwise to New York and making sure that they have all their files with them instead of having them where they work and reside.

There are two people in Buffalo. Mr. Person proposes to take, I think, some 60 dealer witnesses in Buffalo. We would suggest that these people -- these two people be taken in Buffalo at the same time so we don't have to make several trips back and forth to Buffalo.

THE COURT: You may not have any objection to all these people, but I have got an objection to all of it. I read an article in Business Week that indicated -- some astronomical list of depositions and I just --

MR. PERSON: That wasn't it either.

THE COURT: I am not holding that against you.

MR. KLEINBARD: But we have lists of over 300 people, your Honor, that have been submitted for all defendants.

THE COURT: This case is not going to just be a device for endless proceedings and it does seem to me there must be a way to get at a juglar of this case without so many of the depositions. I can't conceive of all these things as being necessary from what I know about the case.

MR. KLEINBARD: I didn't say they were. I am merely saying we are trying to be cooperative and we are saying we can depose as far as we are concerned, any of the people that he thinks have relevant material. All we are asking for is that these three people not be deposed until after the others are deposed and then they should be limited to their knowledge of NABCOR and their actions, if any.

THE COURT: Mr. Person, if there was activity on the part of General Motors to boycott your client, I would assume that there were one or a handful of people that were responsible or had good enough knowledge of the facts. I won't assume that it would be 28 people or even 20 people. I would assume that it would be a much smaller number. Of course, you are on the outside and you have got the problems of finding out the right people to depose, but it seems to me there has got to be some sensible plan to get to the people who are most likely to have knowledge.

MR. PERSON: Working at the top would help.

THE COURT: I disagree and let's forget that. Let's go to somebody besides the top.

MR. PERSON: Well, the head of the fleet department at the times involved, and there was a Mr. Rock, I think, a Mr. Burg and Mr. Karney now who was very active before and was only recently appointed the head of the Fleet Sales and I am not interested in today's information, I am interested in what he knows from yesteryear.

THE COURT: One of the people you list is John Rock. According to your information when was he head of the Fleet Sales Section?

MR. PERSON: I don't know exactly. There had been at least three or four people to have had that spot, so I don't know the relative time spans, but Mr. Burg, I believe, Mr. Rick and Mr. Karney --

THE COURT: There is a Mr. Olson.

MR. PERSON: Mr. Olson was very active in this matter, yes.

MR. KLEINBARD: May I make this suggestion, your Honor, that may be helpful.

THE COURT: Yes.

MR. KLEINBARD: As you know, we have a pretrial conference scheduled at the 20th and at that time your Honor is going to have motions directed to different counts of the complaint. We are moving to dismiss certain counts. Two of those counts involve the fleet programs, 17 and 34. We are also going to move against other counts. It would seem to me that at the very least these depositions ought to be deferred until whatever reasonable date after the 20th your Honor would fix and if those counts are no longer in the complaint, then it makes no sense at all to be examining these people, it would --

THE COURT: No, I think it might because there is no motion to dismiss counts one through three and what I thought we were talking about are people who would be most likely to have knowledge about counts 1 through 3.

MR. KLEINBARD: Right.

THE COURT: I thought that really was what Mr. Person was directing himself to, and indicating that these people might be likely to have such knowledge.

I take it one of your contentions under counts 1 through 3 is that you wanted to get fleet treatment from General Motors and -- you wanted to get cars in volume at low prices.

MR. PERSON: We were looking to be able to buy through the franchised dealers who we found refused to deal with us after learning that we were not qualified fleet

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rge purchasers.

THE COURT: Are you just complaining about the policies of General Motors in giving fleet certificates or are you claiming that there was an intentional attempt to cut out NABCOR aside from just applying standard policies? Do you get my question?

MR. PERSON: I do. In paragraph 109 of the complaint it is a very important part of it and I had failed to see the part of it the last time we were in session, I was looking for it, and the talks about the defendants -- in other words, in light of these apparent difficulties for many franchise dealers, the unlawful conspiracy or combination, developed the plaintiff's allegation to assist the franchise dealer in preserving the territorial exclusive of his franchise. Now, that is what the whole complaint is about. There are a variety of techniques used. By having very stringent warrant requirements we find that our customers don't derive the benefit and that forces a customer into buying from the franchised dealer. The fleet certificate prevents the sale of cars to us because we are invading that territorial exclusive. The destination charge prevents us from moving. It is an overall system by which the --

THE COURT: I would think this. I think that before we can get the discovery finished on counts 1 through 3 the mat-er of the fleet sales going to have to be gone into. I think that Mr. Person has a right to question about the rules and regulations and the policies. I think he also has a right to ask specifically about any actions taken or discussions held directed to NABCOR, whether they were trying to use the fleet rules to cut out NABCOR or they were trying to do something else to cut out NABCOR. But just without -- you know, looking at this with an X-ray, why, I would think that the people who were in charge of the fleet program at the relevant times might well be reasonable targets for depositions.

I would think that would be true no matter what we do on the 20th.

MR. KLEINBARD: All I am saying is this, that we are ten days away from the 20th. We are trying to prepare for that and we are also trying to answer the interrogatories, the rather voluminous interrogatories which plaintiff has served two sets on GM and one on GMAC. They are due on the 16th. The plaintiff has since April of '73, I think to serve these notices.

MR. PERSON: No, I haven't.

MR. KLEINBARD: In addition to which I think we are going to be able to demonstrate on the 20th that the policies of General Motors with respect to fleets was such throughout the period involved here that in no way was NABCOR eligible for fleet treatment.

MR. PERSON: We admit that we aren't. That's the problem. What they have done is eased us out by that.

THE COURT: They set the wrong policies.

MR. PERSON: They set restrictive things here.

MR. KLEINBARD: If our policies are wrong then of course your Honor will deny our motion. But if there is nothing the matter with our policies and if our policies were such that they excluded NABCOR and other people in the NABCOR situation, then your Honor might well be inclined to grant that motion.

THE COURT: What are we getting on or before the 20th from you? Are we getting a voluminous set of motion papers? I hope not.

MR. KLEINBARD: Well, your Honor, we have been asked -- the plaintiff has asked some 1500 different questions in seven sets of interrogatories, only 38 of which are addressed tous, but they are quite voluminous.

THE COURT: To you --

MR. KLEINBARD: To GM and GMAC.

THE COURT: And who is the third?

MR. KLEINBARD: To GM and one to GMAC. There are other sets to other defendants. We think many of them are improper for perfectly obvious reasons. I set that forth to your Honor, just before you left on vacation. I don't want to go through that now. So I have to first answer -- I am answering a fair number of these and I am also objecting to some of them.

THE COURT: We are going to take up those objections on the 20th?

MR. KLEINBARD: Yes, and we are also going to take up the motions on the 20th.

THE COURT: What motions?

MR. KLEINBARD: These are motions asking to dismiss a number of counts in the complaint, including the subject matter we just discussed, the fleet certificates and the fleet programs, that is counts 17 and 24. We may be right and we may be wrong.

THE COURT: What am I going to get in the way of papers before the 20th?

MR. PERSON: I need discovery.

MR. KLEINBARD: The only thing that you are going to get before the 20th, as far as us, is answers -- I mean answers or objections to interrogatories.

THE COURT: And then as far as the applications to dismiss, they --

MR. KLEINBARD: They will be oral argument.

MR. KAPLAN: Let me add this. We are going to submit to you, of course, the documents, the brochures in most cases that describe what each of these programs are. For example, we have discussed in court on a number of occasions this dealer advertising thing in count 14. We will provide you with a copy of the Chevrolet manual that governs that. That manual we think establishes that there is no claim. If it is necessary to do, there will be a brief affidavit explaining when it was in force and matters of that nature.

There will be something like that with respect to each of about five counts.

THE COURT: But basically as I understand it, as far as the applications to dismiss, we will continue our oral discussion of the matters on that basis at the meeting on the 20th and if a briefing on anybody's part is necessary, it can be done after the 20th.

MR. KLEINBARD: That's right.

THE COURT: As far as the discovery, we will have the questions laid out so we can rule on interrogatories and objections.

MR. KLEINBARD: At that time. All I am asking is that in the light of that -- I can't for the life of me -- because we are totally unorganized today as to the proper way in which to proceed. In other words, which witnesses ought to be deposed first and if so, when.

Now that your Honor has indicated that Mr. Person should not begin at the top, I am perfectly happy to sit down with him between now and the 20th and try to agree which of these witnesses would be the first witnesses he could proceed with and we will produce them in New York if they are New York people, or we will produce them for him in Detroit if they are Detroit people.

I am merely asking that we don't go forward with that until after the arguments of the 20th, which is ten days from now, which would seem to me to make more sense.

MR. PERSON: I don't see how they can make a motion for summary judgment in the fleet area before I have had a chance to get discovery.

THE COURT: It may be that they can't and if they ca and it doesn't make any sense, it will be dealt with very quickly. You know, unless somebody indicates otherwise, it would seem to me that the three people you have on your notice listed for the 17th and 17th, or three of the people are probably prime targets for depositions initially, and that's Olson, Rock and Burg.

MR.PERSON: And Mr. Karney also.

THE COURT: And Mr. Karney. As I understand it, subject to questions about place of deposition and whether you have to subpoena them or GM will produce them, all of which can be worked out easily, the taking of those depositions, Olson, Rock, Burg and Karney is not objected to by GM, subject to date, place and whether they are going to be subpoenaed or produced voluntarily.

It certainly doesn't seem -- if Paul, Weiss says that it would be inconvenient to have them on the 16th versus sometime after the 20th, we are playing around with three or four days and it doesn't make the slightest bit of difference to me.

So I think we will leave it this way. I would say to you, Mr. Kleinbard, I see no point of anything happening on the 20th that will eliminate the necessity of those people being deposed. I would just for the sake of expedition think -- I don't want to delay Mr. Person any substantial period of time in starting his depositions.

MR. KLEINBARD: I don't either. We just can't do both at once.

THE COURT: I would appreciate your sitting down with Mr. Person and working out a schedule, or trying to work out a schedule for the taking of depositions beginning right quick after the 20th.

MR. KLEINBART: That is perfectly agreeable, your

Honor, and I will agree to those four people as you have suggested.

MR. PERSON: Your Honor, also the question of having me to go to Detroit. There is a question of the relative size of the parties. My people have been coming into New York for depositions.

THE COURT: If you can't agree on that I will rule on that on the 20th.

MR. PERSON: Will you be willing to bring these peop into New York?

MR. KLEINBARD: Just a moment. I am just looking to see where they are. Olson is in Detroit --

THE COURT: Is he still with GM?

MR. KLEINBARD: That is correct. Berg is in Detroit and Karney is in Detroit so three out of the four are in Detroit.

THE COURT: And Berg and Karney are still with GM?

MR. KLEINBARD: Yes.

THE COURT: How about Rock?

MR. KLEINBARD: He is in New York. He is in White Plains, but I am not being fussy. We would produce the three of them in Detroit on any mutual agreeable dates immediately following the 20th and we will produce Mr. Rock here.

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information and we will not go into that this evening, but I don't know. I wish I could get you, Mr. Person, to trim down your ideas about discovery. I know -- I just know as sure as I am sitting here that your present concepts are way beyond what is necessary. At every stage I have found this and I am going to find it now and the more we get into it I will continue to find it.

Now, I don't really care whether GM objects to depositions or not. Every deposition you take is ultimately a burden on me and a burden on a lot of people. If the burden is necessary, so be it, you will get your depositions, but if it is unnecessary -- maybe Paul, Weiss can sustain it, but I can't.

So I am going to ask you both to consider any way you can to trim this deposition program down, and that means to do it in stages. Maybe you can't have an ultimate final deposition program. Maybe you have to do it a step at a time. Maybe that's the best way to do it, to agree on three or four and see how that comes out.

MR. KLEINBARD: I am agreeable to that, your Honor, so long as I --

THE COURT: Then of course if you agree to bring two people to New York you don't wave your right to request others in Detroit.

MR. KLEINBARD: That is all I am requesting at this time.

THE COURT: Let's do something to keep this as limited as reasonably possible.

With that in mind -- and I don't know what has to be done in the case, you know, in theory, because I am not familiar with these matters and I am not familiar with the documents and I am not familiar with anything in the detail, so I just appeal to both of you to sit down and try to figure out and initial first step of depositions which is reasonably limited. It may be that you could take this fellow from Midtown Chevrolet as an example. Maybe that would reveal something. I think that what we went through on Colonial Cadillac was a useful example which illuminated a lot of things in the case beyond Colonial Cadillac.

So maybe taking a fellow from Midtown would be a useful first step. You can have four or five or six and let's go.

MR. KLEINBARD: We are perfectly willing to proceed in that fashion. We will get together. Unfortunately there is a deposition on this very matter in Chicago tomorrow.

THE COURT: What's that, the bank?

MR. KAPLAN: No, it is our deposition of a fellow no Interrogatory No. 1 (To be answered by Habcor only)

Identify each defendant and each co-conspirator franchised dealer named in the complaint which you claim refused to sell one or more new automobiles to you.

Interrogatory No. 2 (To be answered by Habcor only)

State separately with respect to each refusal by each franchised dealer identified in response to Interrogatory No. 1:

no (a) the date thereof

no (b) the identity of each person employed by you who has knowledge or information concerning such refusal

1,2,4,5 (c) the identity of each person whom you believe has or may have knowledge or information concerning such refusal and state the basis for your belief as to each such person

1,2,4,5 (d) the identity of each document relating or referring to such refusal.

no Interrogatory No. 3

Identify each bulletin referred to in paragraph 111(B)(7)(c) of the complaint.

Interrogatory No. 4

no Identify each dealer association which you claim acted in the manner alleged in paragraph p 31 111(B)(7)(d) of the complaint, state the factual basis for your contention, and

no (a) identify each person employed by you who has knowledge or information relating to any of the matters alleged in paragraph 111(B)(7)(d) of the complaint

1,2,4,5 (b) identify each person whom you believe has or may have knowledge or information relating to any of the matters alleged in said paragraph

2,3,4,5 (c) identify each document relating to any of the matters alleged in said paragraph.

Interrogatory No. 5

Identify each person, employed by each defendant and each co-conspirator franchised dealer named in the complaint, with whom you have had one or more communications with respect to:

NO (a) obtaining new automobiles

NO (b) obtaining warranty servicing on vehicles sold through the Nabcor System

NO (c) obtaining a fleet user certificate

NO (d) obtaining a fleet lessee certificate

NO (e) obtaining the benefits of an automobile manufacturer's fleet plan or program

1,2,3,4,5 (f) any matters relating to the subject matter of this action.

NO Interrogatory No. 6

Identify each defendant and each co-conspirator franchised dealer named in the complaint which you claim failed to honor one or more warranty claims of automobile owners who purchased their automobiles through the Nabcor System.

Interrogatory No. 7

With respect to each failure to honor a warranty claim by each dealer identified in response to Interrogatory No. 6, state:

NO (a) the date of such failure

NO (b) the identity of the owner of the automobile with respect to which such warranty claim was made

No (c) the identity of each person employed by you who has knowledge or information concerning such warranty claim

2,3,4,5 (d) the identity of each person whom you believe has or may have knowledge or information concerning such warranty claim, and state the basis for your belief as to each such person

2,3,4,5 (e) the identity of each document relating or referring to each such failure.

Interrogatory No. 8

State separately with respect to each failure to honor a warranty claim identified in response to Interrogatory No. 7:

No (a) whether the owner of the vehicle thereafter had his warranty claim honored;

(b) if the answer to paragraph (a) of this interrogatory is in the affirmative;

No (1) identify the franchised dealer that honored the claim

No (2) state the date on which the claim was honored

No (3) identify each person employed by you who has knowledge or information concerning the honoring of such claim

2,3,4,5 (4) identify each person whom you believe has or may have knowledge or information concerning the honoring of such claim and state the basis for your belief as to each such person

1,3,4,5 (5) identify each document relating to the honoring of such claim

(c) if the answer to paragraph (a) of this Interrogatory is in the negative:

No (1) state whether you paid for repair work or parts which you claim should have been covered by the warranty

No (2) state the amount of any such payments

No (3) identify each person to whom each such payment was made

1,3,4,5 (4) identify each document relating to each such payment

No (5) identify each person employed by you who has knowledge or information concerning each such payment

1,3,4,5 (6) identify each person whom you believe has or may have knowledge or information concerning each such payment and state the basis for your belief as to each such person.

No Interrogatory No. 9

Identify each person employed by you who has knowledge or information concerning one or more communications, between or among any two or more defendants or co-conspirators named in the complaint, relating or referring to one or more plaintiff in this action.

1,2,3,4,5 Interrogatory No. 10

With respect to each person identified in response to Interrogatory No. 9, describe separately each communication between or among any two or more defendants or co-conspirators named in the complaint, relating or referring to one or more plaintiff in this action, by stating:

(a) the date of such communication

(b) the identity of each defendant and co-spirator and each person employed thereby whom you claim participated in such communication

(c) the identity of each person, other than persons employed by you, whom you believe has or may have knowledge or information relating to said communication

(d) the basis for your belief as to each person identified in response to paragraph (c) of this Interrogatory

(e) the identity of each document containing or reflecting the substance of all or any part of such communication

(f) the identity of each document relating or referring to the substance or the fact of such communication.

1,2,3,4,5 Interrogatory No. 11

Identify each person whom you believe has or may have knowledge or information concerning one or more communications, between or among any two or more defendants or co-conspirators named in the complaint, relating or referring to one or more plaintiff in this action.

2,3,4,5 Interrogatory No. 12

Identify each defendant and each co-conspirator franchised dealer with which you claim GM agreed to assist in eliminating you or any plaintiff in this action as a competitor of a franchised dealer or otherwise to injure you or any plaintiff in your business or property and, with respect to each such dealer:

(a) state the factual basis for your claim

(b) identify each document which you assert supports your claim

(c) identify each person employed by you who has knowledge or information relating to each such agreement

(d) identify each person whom you believe has or may have knowledge or information relating to each such agreement and state the basis for your belief as to each such person

(e) state the date on which you claim such an agreement first occurred and the factual basis for your claim.

Interrogatory No. 13

NO Identify each defendant and each co-conspirator franchised dealer which you claim GM encouraged to report Nabcor sales activities, and with respect to each such dealer

NO (a) state the factual basis for your claim

1,3,4,5 (b) identify each document which you assert supports your claim

NO (c) identify each person employed by you who has knowledge or information relating to any such encouragement

1,3,4,5 (d) identify each person whom you believe has or may have knowledge or information relating to any such encouragement and state the basis for your belief as to each such person

No (e) state each date on which you claim GM encouraged such dealer to report Nabcor's sales activities.

Interrogatory No. 14

No State the factual basis for your claim that GM used its private records of new automobile serial numbers to identify factory-franchised suppliers of new automobiles to Nabcor and identify:

1,3,4,5 (a) each document which you assert supports your claim

No (b) each person employed by you who has knowledge or information relating to any such use of private records

1,3,4,5 (c) each person whom you believe has or have any knowledge or information relating to any such use of private records and state the basis for your belief as to each such person.

Interrogatory No. 15

No State the factual basis for each of the allegations contained in paragraph 111(B)(2)(d) of the complaint and: 2-7

No (a) identify each GM sales zone or district which you claim communicated with another zone or district with respect to any plaintiff in this action

No (b) identify each GM sales zone or district which you claim coerced or convinced dealers not to continue dealing with Nabcor

NO (c) identify each franchised dealer whom you claim GM attempted to coerce or convince not to continue dealing with Nabcor

NO (d) identify each person employed by you who has knowledge or information relating to any of the matters alleged in paragraph 111(B)(2)(d)

1,3,4,5 (e) identify each person whom you believe has or may have knowledge or information relating to any of the matters alleged in paragraph 111(B)(2)(d)

1,3,4,5 (f) identify each document relating to any of the matters alleged in paragraph 111(B)(2)(d).

NO Interrogatory No. 16 p.17

Identify each "formerly independent franchised dealer" referred to in paragraph 111(B)(2)(e) of the complaint.

Interrogatory No. 17

NO Identify each GM-owned or each GM-financed franchised dealer which you claim sought to influence one or more other franchised dealers not to supply automobiles to any plaintiff herein or otherwise to injure the business or property of any plaintiff herein and, with respect to each such GM-owned and GM-financed franchised dealer:

NO (a) identify each franchised dealer which you claim it sought to influence with respect to any plaintiff herein

NO (b) identify each person employed by you who has knowledge or information relating to such attempts

1,3,4,5 (c) identify each person whom you believe has or may have knowledge or information relating to such attempts and state the basis for your belief as to each such person

1,3,4,5 (d) identify each document relating or referring to each such attempt

No (e) state the date on which you claim each such attempt to influence another franchised dealer took place.

Interrogatory No. 18

No State the factual basis for each of the allegations contained in paragraph 111(B)(2)(g) of the complaint and:

No (a) identify each person employed by you who has knowledge or information relating to any of the matters alleged in said paragraph

1,3,4,5 (b) identify each person whom you believe has or may have knowledge or information relating to any of the matters alleged in said paragraph

1,3,4,5 (c) identify each document relating or referring to any of the matters alleged in said paragraph

No (d) identify each dealer referred to in said paragraph

No (e) identify each dealer association referred to in said paragraph.

Interrogatory No. 19

No State the factual basis for each of the allegations contained in paragraph 111(B)(2)(h) of the complaint and:

No (a) identify each person employed by you who has knowledge or information relating to any of the matters alleged in said paragraph

1,3,4,5 (b) identify each person whom you believe has or may have knowledge or information relating to any of the matters alleged in said paragraph

2,3,4,5 (c) identify each document relating or referring to any of the matters alleged in said paragraph.

Interrogatory No. 20

State separately with respect to each meeting referred to in paragraph 111(B)(2)(h) of the complaint: 2.8

NO (a) the date of the meeting

NO (b) the identity of each person whom you claim was present at such meeting

NO (c) the identity of each representative of GM whom you claim was present at such meeting

NO (d) the identity of each person employed by you who has knowledge or information concerning such meeting

2,3,4,5 (e) the identity of each person whom you believe has or may have knowledge or information concerning such meeting and the basis for your belief as to each such person

2,3,4,5 (f) the identity of each document relating to such meeting.

Interrogatory No. 21

NO State the factual basis for each of the allegations contained in paragraph 111(B)(2)(i) of the complaint and: 2C

NO (a) identify each dealer referred to in said paragraph

NO (b) identify each person employed by you who has knowledge or information relating to any of the matters alleged in said paragraph

2,3,4,5 (c) identify each person whom you believe has or may have knowledge or information relating to any of the matters alleged in said paragraph and state the basis for your belief as to each such person

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

562

---------------------------------------x
NATIONAL AUTO BROKERS CORP., et al., :
Plaintiffs, :
-against- :
GENERAL MOTORS CORPORATION, et al., :
Defendants. :
---------------------------------------x

70 Civ. 5421A (TPG)

ANSWERS AND OBJECTIONS OF MIDTOWN CHEVROLET AND GENERAL MOTORS TO PLAINTIFFS' INTERROGATORIES ADDRESSED TO THE DEALER DEFENDANTS

These are answers and objections of defendant General Motors Corporation ("GM"), sued herein both in its own right and as Midtown Chevrolet, Inc., ("Midtown"), to plaintiffs' interrogatories addressed to sixteen automobile dealer defendants, GM and Ford, dated July 19, 1974.

Preliminary Statement

One of the seven sets of interrogatories served by plaintiffs in July 1974 was directed to automobile dealer defendants and to GM and Ford insofar as they own or finance automobile dealerships. The only GM-owned and operated dealership named in the complaint is Midtown Chevrolet.

Midtown Chevrolet is but one of 61 defendants originally charged in counts 1-3 of the complaint with a conspiracy to boycott plaintiffs. (Cpt. ¶ 39, at 13; ¶ 111(B)(1), at 25-27). The complaint contains no allegations concerning specific actions pursuant to the alleged conspiracy on the part of Midtown., The one paragraph of the complaint which discusses

Midtown, states:

> "In 1966-67, MIDTOWN CHEVROLET, INC., from whom Nabcor had been purchasing new automobiles at fleet prices, unlawfully conspired and combined with, and sold out to, Defendant GM, and conspired or combined with other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees." (Cpt. ¶ 112(A)(u), at 40)

In addition, the deposition of Frank Maiorana and his affidavit in support of the preliminary injunction motion establish that the claim asserted with respect to Midtown is very limited. It appears that plaintiffs claim that in November 1966 Nabcor ordered a number of automobiles from Don Allen Midtown Chevrolet, Inc. Subsequently, GM acquired Don Allen, renamed it Midtown Chevrolet Pontiac, refused to accept any new orders from Nabcor, and delivered two cars previously ordered by Nabcor from Don Allen. (F. Maiorana dep. 1300-06, F. Maiorana aff., Mar. 4, 1973, p. 25 [copy annexed as Exhibit A]).

General Objection

This set of interrogatories is addressed to 16 defendant automobile dealers and to GM and Ford. Paragraph 4 of the definitions preceding the interrogatories provides:

> "'You' or "Your' shall mean the defendant separately answering these interrogatories, its subsidiaries and predecessors in interest, if any, its present and former officials, executives, officers, employees, agents and all other persons acting or purporting to act on behalf of the defendant or subsidiary or predecessor in interest, except that any answers by GM and shall be limited to dealer divisions and subsidiaries and factory-financed dealers controlled by GM or Ford, their respective subsidiaries and predecessors, named in the complaint as defendants or co-conspirators."

Thus, the interrogatories seek to require GM and Ford to answer with respect to dealerships named in the complaint as defendants or co-conspirators which are owned or financed by GM. To the extent the interrogatories seek information with respect to dealerships financed but not owned and operated by GM, they are objectionable.

Prior proceedings in this action have disclosed that defendant Bob Bain Chevrolet has been financed by GM's Motors Holding Division. Since Bob Bain Chevrolet is a defendant in this action represented by its own counsel, and these interrogatories have been addressed to it, GM should certainly not be required to respond on behalf of Bob Bain Chevrolet. The same objection is fully applicable to any other dealer-defendant which may have been financed by GM.

Nor should GM be required to respond to these interrogatories with respect to named co-conspirator dealerships which may have been financed by GM, but which are not operated by it. The Motors Holding dealerships are separately incorporated and are operated by independent personnel. If plaintiffs desire discovery with respect to such dealerships, there are appropriate discovery devices available to them. GM is simply not in a position to respond on behalf of such dealers.

Interrogatory No. 1

Identify and describe each automobile order sent or otherwise communicated to you by Nabcor or any Nabcor franchisee ("Your Customer"), and as to each such order:

(a) identify the individual who placed the order with you;

(b) identify the individual who received the order;

(c) state the date of your receipt of the order;

(d) state the make and year of the automobile ordered;

(e) state whether you rejected the order, and if so

  (i) identify the individual who rejected or approved the rejection;

  (ii) state the date of such rejection or approval of rejection; and

  (iii) state the date the rejection was communicated to Your Customer and identify the individual;

(f) If you transmitted the order to Your Manufacturer, identify the individual who prepared, approved or forwarded the order to Your Manufacturer;

(g) state the date the order was transmitted to Your Manufacturer;

(h) state the date the car was delivered to you;

(i) state the date the car was first available for delivery to Your Customer;

(j) state whether the order was transmitted to Your Manufacturer as a "fleet", "stock" or "retail" order, and all communications with Your Manufacturer in connection therewith;

(k) identify and describe all communications between you and Your Manufacturer concerning the order, the warranty or Your Customer; and

(l) state whether you applied for a fleet rebate with respect to such order and the results of your application.

Response to Interrogatory No. 1

1. Paragraphs (j) and (k) of this interrogatory, as well as Interrogatories 2-7, 10, 11, 17, 20, 21, 27, 50, 52, 88, 87* and 88*, seek to require Midtown to identify and describe communications with or about and documents concerning

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* This is the second of two interrogatories bearing this number.

the plaintiffs. Midtown has already answered these interrogatories in substantial part in that it has participated in the GM file search designed to locate documents relating to Nabcor or any of the plaintiffs and has produced the documents[1] located by that search. Thus, plaintiffs already have written communications with and relating to them.

To the extent that these interrogatories require Midtown to discover the existence of oral communications and to give written accounts of these communications, they are objectionable for the following reasons:

(a) The document production combined with plaintiffs' own knowledge have enabled plaintiffs to identify those Midtown employees whom plaintiffs apparently believe may have knowledge or information relevant to this action.[2] Plaintiffs have stated their intention to take depositions of these employees. (Statement by Plaintiffs Identifying Officials and Employees of Defendants Intended to be Deposed, dated July 25, 1974) Requiring Midtown to prepare second-hand written summaries of conversations that will doubtless be inquired into during plaintiffs' depositions would be unduly burdensome in these circumstances and serve no useful purpose.

(b) To the extent that these interrogatories seek information concerning conversations participated in by Midtown employees whose names have not surfaced in the documents or elsewhere in this litigation, they are objected to in that compliance would be unduly costly and burdensome.

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[1] Other than privileged documents.

[2] These employees are listed in Interrogatory 24 (M) and in Statement by Plaintiffs Identifying Officials and Employees of Defendants Intended to be Deposed, dated July 25, 1974.

2. Midtown will respond to the portions of this interrogatory other than paragraphs (j) and (k) to the extent that the information sought is available.

Interrogatory No. 2

Identify and describe all other communications by you with Your Manufacturer about Nabcor, any Nabcor franchisee or any Independent Dealer or any car orders or warranty work for customers thereof.

Response to Interrogatory No. 2.

1. See ¶ 1 of Response to Interrogatory No. 1.

2. This interrogatory, as well as Interrogatories 3-7, 10, 11, 14, 17, 20, 21, 23, 27, 64, 88, 87* and 88*, call for information regarding problems of persons such as non-plaintiff Nabcor franchisees and other automobile brokers, which are not parties to this action. The Court has ruled that this action may not proceed as a class action on behalf of such non-parties. 376 F. Supp. 680. Consistent with that ruling, it has already limited document production to documents relating to Nabcor or to one of the plaintiffs. (Minutes, April 29, 1974, at 4-6). The scope to plaintiffs' interrogatories should be similarly limited, as any problems of non-party brokers or dealers are not a part of or relevant to this case.

3. Since no claim has been made that Midtown refused to perform warranty work for customers of plaintiffs, so much of this interrogatory as seeks information relating to warranty work calls for material irrelevant and immaterial to this action.

Interrogatory No. 3

Identify and describe all communications among your Personnel (as the term is defined at ¶ 16 of the definitional section hereof) concerning any complaints about Nabcor, any Nabcor franchisee or any Independent Dealer, including any complaints about lost new-car sales, advertising or warranty work.

Response to Interrogatory No. 3

See ¶ 1 of Response to Interrogatory No. 1 and

¶ 2 of Response to Interrogatory No. 2.

Interrogatory No. 4

Identify and describe all communications between you and Nabcor or any Nabcor franchisee concerning any actual or prospective business dealings with you, including:

(a) any negotiations or discussions;

(b) any placement, rejection or acceptance of car orders;

(c) any delivery of new cars; and

(d) any performance or rejection of or complaints about warranty work for customers of Nabcor or any Nabcor franchisee.

Response to Interrogatory No. 4

See ¶ 1 of Response to Interrogatory No. 1 and

¶ 2 of Response to Interrogatory No. 2.

Interrogatory No. 5

Identify and describe all communications concerning Nabcor, any Nabcor franchisee or any Independent Dealers with any manager, roadman or other employee of any zone, division or district of Your Manufacturer.

Response to Interrogatory No. 5

See ¶ 1 of Response to Interrogatory No. 1 and

¶ 2 of Response to Interrogatory No. 2.

Interrogatory No. 6

Identify and describe all communications with Your Manufacturer concerning the status of Nabcor, any Nabcor franchisee or any Independent Dealers as the holder of a fleet certificate or number or as a person entitled to order cars through franchised dealers on a fleet basis.

Response to Interrogatory No. 6

See ¶ 1 of Response to Interrogatory No. 1 and ¶ 2 of Response to Interrogatory No. 2.

Interrogatory No. 7

Identify and describe all communications about Nabcor, any Nabcor franchisee or any Independent Dealers between you and

- (a) Any of the following newspaper publishing companies:
  - (i) The Buffalo Courier-Express, Inc., publisher of the Courier-Express;
  - (ii) New York News, Inc., publisher of the News;
  - (iii) The New York Times Company, Inc., publisher of The New York Times;
  - (iv) Newsday, Inc., publisher of Newsday;
  - (v) Westchester-Rockland Newspapers, Inc., publisher of The Daily Item, The Daily Times, The Standard-Star, The Daily Argus, The Herald Statesman, The Daily News, The Citizen Register, The Reporter Dispatch, The Journal-News, Review-Press & Reporter, and the affiliated newspaper The Evening Star; and
  - (vi) any other newspaper publishing companies; and
- (b) any of the Defendant BBB's or any other Better Business Bureau;
- (c) any motor vehicle bureau or department;
- (d) any Financial Institutions (as the term is defined in ¶ 13 of the definitional section hereof);
- (e) offices of any attorney general, district attorney, police, consumer affairs bureau or other governmental agency; and
- (f) any other person.

Response to Interrogatory No. 7

1. See ¶ 1 of Response to Interrogatory No. 1 and ¶ 2 of Response to Interrogatory No. 2.

2. Paragraphs (a)(iv) and (b) through (f) of this interrogatory, as well as Interrogatories 10, 17, 20, 21, 27, 40, 41 and 88*, call for the identification of communications between Midtown and persons which are not named as defendants or co-conspirators in the complaint. Any such documents relating to plaintiffs have been or will be produced. Insofar as these interrogatories seek to elicit accounts of oral communications, they are objectionable for the reasons stated in ¶ 1 of the Response to Interrogatory No. 1. Insofar as they seek information concerning communications with persons named as defendants or co-conspirators and which do not relate to plaintiffs, they are objectionable, as they seek information irrelevant and immaterial to any issue in this action.

Interrogatory No. 8

Identify and describe all communications with Your Manufacturer, any of the other named defendants or co-conspirators or any other persons about this action.

Response to Interrogatory No. 8

This interrogatory is objectionable because it calls for information irrelevant and immaterial to any issue in this action.

This interrogatory is also objectionable to the extent it calls for the identification and description of privileged communications.

Interrogatory No. 9

Identify and describe all agreements or other arrangements between you and any other person concerning indemnification as to any liability or any payment of expenses in defending this action.

Response to Interrogatory No. 9

This interrogatory is objectionable because it calls for information irrelevant and immaterial to any issue in this action.

Interrogatory No. 10

Identify and describe all reports made by you to Your Manufacturer, any automobile dealer association or any other person about any cars sold by any person to Nabcor, any Nabcor franchisee or any Independent Dealers.

Response to Interrogatory No. 10

See ¶ 1 of Response to Interrogatory No. 1, ¶ 2 of Response to Interrogatory No. 2 and ¶ 2 of Response to Interrogatory No. 7.

Interrogatory No. 11

Identify and describe all complaints or criticisms made to you about Nabcor, any Nabcor franchisee, any Independent Dealers or any customers thereof.

Response to Interrogatory No. 11

See ¶ 1 of Response to Interrogatory No. 1 and ¶ 2 of Response to Interrogatory No. 2.

Interrogatory No. 12

Identify each of the Personnel of Your Manufacturer with whom you have had any communications by telephone or in person about:

(a) fleet sales;

(b) applications for fleet certificates or fleet numbers;

(c) territorial questions or problems;

(d) destination charges;

(e) advertising contribution charges or problems;

(f) performance of warranty work for cars sold by other franchised dealers or Independent Dealers; or

(g) renewal, non-renewal or termination of your franchise.

Response to Interrogatory No. 12

1. Each paragraph of this interrogatory is objectionable because it is overbroad and calls for information irrelevant to any issue in this action, to the extent this action involves Midtown Chevrolet.

2. Paragraphs (a) and (b) of this interrogatory, as well as Interrogatories 16 and 31, seek general information relating to GM fleet plans or programs. On July 12, 1974, the Court responded to plaintiffs' demand for the production of voluminous documents concerning fleet programs by requiring GM to produce policy documents "which show the nature of the fleet programs during the relevant periods, . . . and what is required to qualify for those documents, the rights of the beneficiaries of those programs, all the details about what the programs are." (Minutes, July 12, 1974, at 33) It also noted that a prior direction had required production of documents referring to the plaintiffs. (Id at 33-35) Thus, plaintiffs have been provided with documents responsive to these interrogatories, and to the extent they seek additional information, these interrogatories are objectionable on the ground that they seek information that is irrelevant and immaterial to this action.

3. Paragraph (c) of this interrogatory, as well as Interrogatories 27, 43, 44, 45 and 65, deal with plaintiffs' recent assertion that GM restricts the territories in which its dealers may sell. At the July 12, 1974 conference, the Court indicated that it was unaware of any allegation in the complaint concerning the imposition of territorial restraints on dealers and that discovery would be denied in this area unless plaintiffs can show that such a claim is alleged in the complaint. (Minutes, July 12, 1974, at 14-15) Plaintiffs cannot make such a showing, since there is no such allegation in the complaint*. Accordingly,

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*Paragraph 109 of the complaint does not embody any such claim. In its entirety, paragraph 109 reads: "In light of these apparent difficulties for many franchised dealers, the unlawful conspiracy or combination developed, the plaintiffs allege, to assist the franchise dealer in preserving the territorial exclusive of his franchise." This merely refers to the fact that GM seeks to locate its dealers so as to give each a sufficient sales potential for a reasonable profit opportunity; thus, dealers are not crowded together in areas insufficient to support them, and in that limited sense, each has a "territorial exclusive". It does not embody a claim that GM restricts the geographical area within which a dealer may sell.

these interrogatories are objectionable because they call for information irrelevant to any issue in this action and because they are beyond the scope of the Court's order.

4. Paragraph (d) of this interrogatory, as well as Interrogatories 46-48, ask Midtown about GM's destination charges. These are all objectionable because they call for information irrelevant to any issue in this action involving Midtown.

The information sought by these interrogatories appears to relate to counts 18-20 of the complaint. What remains of these counts is plaintiffs' claim that the automobile manufacturers by illegally inflating destination charges have precluded plaintiffs from transporting automobiles from one area to another in competition with the manufacturers. National Auto Brokers Corp. v. General Motors Corp., 376 F. Supp. 620, 631-32 (S.D.N.Y. 1974). The Court has directed that GM provide plaintiffs with "policy documents outlining the reasons for [the] present [destination charge] system and the reasons for any change that led into the present system. . . [and] documents showing the method of calculation." (Minutes, July 12, 1974, at 20-21) GM is complying with that direction and the discovery sought here is therefore unnecessary and unduly burdensome.

5. Paragraph (e) of this interrogatory, as well as Interrogatories 84-87, ask Midtown about GM's advertising contribution system. They are objectionable, because they call for information irrelevant to any issue in this action involving Midtown.

The information sought by these interrogatories appears to relate to count 14 which alleges that the four manufacturer defendants illegally discriminated against Nabcor by requiring it to pay an advertising contribution without full refund.

Plaintiffs have sought information concerning advertising contributions from GM in the set of interrogatories addressed to GM. GM is producing documents describing dealer advertising associations. This material should be sufficient to answer plaintiffs' legitimate inquiries. To the extent plaintiffs seek additional information, it is irrelevant and immaterial to this action and, in light of the information being provided, unduly burdensome to assemble.

6. Paragraph (f) of this interrogatory, as well as Interrogatories 16, 53 and 56, request general information concerning GM's warranty programs. These interrogatories are all objectionable because they call for information irrelevant and immaterial to any issue in this action. At the July 12, 1974 conference, the Court rules that all that remains of plaintiffs' warranty claims is the claim that Nabcor's customers were denied warranty work to which they were entitled pursuant to an alleged boycott. The Court denied discovery concerning warranty work in general and ruled that the only documents relevant to plaintiffs' warranty claim are those which specifically refer to Nabcor or any of the plaintiffs. Plaintiffs' attorney has acknowleged that given the limited scope of the remaining warranty claim, the only relevant documents are documents which specifically refer to plaintiffs. (Minutes, July 12, 1974 at 11-15). Since documents relating to Nabcor or any of the plaintiffs have already been produced, Midtown has completely fulfilled its discovery obligations with respect to warranty programs. To the extent these interrogatories seek additional information, they are objectionable on the ground that the information sought is irrelevant and immaterial to any issue in this action.

7. With respect to paragraph (f), see also ¶ 2 of Response to Interrogatory No. 7.

Interrogatory No. 13

State whether you are a division, subsidiary or corporation financed by Your Manufacturer, or none of these.

Response to Interrogatory No. 13

Midtown is an unincorporated branch of the Chevrolet Motor Division of General Motors Corporation.

Interrogatory No. 14

Identify and describe all negotiations and other dealings between you and any Independent Dealers.

Response to Interrogatory No. 14

This interrogatory calls for information that is irrelevant and immaterial to this action. See ¶ 2 of Response to Interrogatory No. 2.

Interrogatory No. 15

Identify and describe all statistics supplied to you by Your Manufacturer, any dealer association or any franchised dealer on the dollar amount of advertising placed by any dealer associations or dealers in specified newspapers or other news media.

Response to Interrogatory No. 15

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 16

Identify and describe all documents received by you from Your Manufacturer concerning its fleet or warranty program.

Response to Interrogatory No. 16

See ¶¶ 2 and 6 of Response to Interrogatory No. 12.

Interrogatory No. 17

Identify and describe all meetings and other communications concerning Nabcor, any Nabcor franchisee or any Independent Dealers with any franchised dealer or any automobile dealer association.

Response to Interrogatory No. 17

See ¶ 1 of Response to Interrogatory No. 1, ¶ 2 of Response to Interrogatory No. 2 and ¶ 2 of Response to Interrogatory No. 7.

Interrogatory No. 18

Identify each automobile dealer association and any section thereof of which you are a member, and state:

(a) the duration of your membership; and

(b) each position in the association as an officer, director or employee held by any of your Personnel.

Response to Interrogatory No. 18

Midtown is not a member of any dealer association whi[illegible] named as a defendant or co-conspirator in this act[illegible]

This interrogatory is objectionable to the extent it seeks information relating to memberships in automobile dealers associations which are not named as defendants or co-conspirators. Since Midtown communications with such parties cannot be a part of the conspiracy alleged in the complaint, this interrogatory seeks information irrelevant and immaterial to any issue in this action.

Interrogatory No. 19

Identify each meeting of any dealers or of any automobile dealer associations attended by any of your Personnel; and as to each such meeting:

(a) identify each of the Personnel of any Defendant Automobile Manufacturers who attended all or any part of the meeting;

(b) describe in detail any discussion concerning Nabcor, any Nabcor franchisee or any Independent Dealers; and

(c) identify and describe all documents relating to the meeting.

Response to Interrogatory No. 19

To the extent that this interrogatory seeks information beyond the identification of meetings at which the plaintiffs were discussed and GM personnel present at such discussions, it seeks information irrelevant and immaterial to this action.

Also see ¶ 1 of Response to Interrogatory No. 1.

Interrogatory No. 20

Identify any threats or complaints against any franchised dealers by any dealer associations or other franchised dealers for dealing or alleged dealing with Nabcor, any Nabcor franchisee or any Independent Dealers.

Response to Interrogatory No. 20

See ¶ 1 of Response to Interrogatory No. 1, ¶ 2 of Response to Interrogatory No. 2 and ¶ 2 of Response to Interrogatory No. 7.

Interrogatory No. 21

Identify and describe all publications or other documents circulated by any dealer association or franchised dealer referring to Nabcor, any Nabcor franchisee or any Independent Dealers.

Response to Interrogatory No. 21

See ¶ 1 of Response to Interrogatory No. 1, ¶ 2 of Response to Interrogatory No. 2 and ¶ 2 of Response to Interrogatory No. 7.

Interrogatory No. 22

Identify each franchised dealer located within 10 miles of your place of business who is authorized by Your Manufacturer to sell any of the make(s) of new cars which you are authorized to sell, and identify the general manager and fleet sales manager of each for all periods covered by these interrogatories.

Response to Interrogatory No. 22

This interrogatory calls for information irrelevant to any issue in this action.

Interrogatory No. 23

With respect to each grand jury or other investigation concerning Nabcor, any Nabcor franchisees, or any Independent Dealers in which you participated by subpoena or otherwise;

(a) identify the investigation;

(b) identify each person who was subpoenaed to testify or actually testified and state the approximate duration of his or her testimony;

(c) identify and describe any meetings at which such person discussed any matters in anticipation of his or her testimony;

(d) identify and describe any meetings at which such person discussed his or her participation in the investigation or the investigation itself, describing in detail each of the communications which took place at any such meetings; and

(e) identify each document which refers to the investigation or any of the testimony which was given during the investigation.

Response to Interrogatory No. 23

See ¶ 2 of Response to Interrogatory No. 2. See also Response of GM to Interrogatory No. 15 of interrogatories addressed to GM, Ford, Chrysler and American Motors.

Interrogatory No. 24

Identify each of the following persons, including a description of the title or job function and duration of employment:

* * * *

M. (TO BE ANSWERED BY MIDTOWN)

1. Walter Engelert, Fleet Sales Manager
2. Jerry Allen.

* * * *

Response to Interrogatory No. 24

Midtown will respond to this Interrogatory.

Interrogatory No. 25

As to all or any part of the Time Period, identify each person who held any of the offices or positions or is otherwise described below, and as to each person so identified:

(a) describe each office, position or other relationship involved; and

(b) state the duration of each such relationship, as follows:

(a) The owner, partner or any holder of 10% or more of any class of your securities (indicating the percentage of ownership);

(b) President, vice preident, secretary, treasurer or other officer;

(c) Member or chairman of the board of directors;

(d) General manager;

(e) Sales manager;

(f) Fleet manager;

(g) Service manager;

(h) Parts manager; and

(i) Used-car manager.

Response to Interrogatory No. 25

Midtown will respond to this interrogatory with respect to the period December 1, 1966 through January 31, 1967. Insofar as this interrogatory seeks information with respect to any other time period, it is objectionable on the ground that such information is irrelevant to this action.

Interrogatory No. 26

Identify each franchised dealer in which you or any of your Personnel was a partner, security holder, officer, director, employee or agent during any part of the Time Period, and identify each such relationship and the duration thereof.

Response to Interrogatory No. 26

Insofar as this interrogatory relates to Midtown, as opposed to GM in general, none.

Interrogatory No. 27

Identify and describe each Financial Institution, newspaper, defendant BBB or motor vehicle department or bureau in which any of your Personnel are on any board of directors or board of advisors, or act as a consultant; and identify all communications relating to:

(a) the advertising, financing, servicing, leasing or selling of new cars by Nabcor, any Nabcor franchisee or any Independent Dealers; and

(b) territorial protection afforded to franchised dealers by any of the Defendant Automobile Manufacturers.

Response to Interrogatory No. 27

See ¶ 1 of Response to Interrogatory No. 1, ¶ 2 of Response to Interrogatory No. 2, ¶ 2 of Response to Interrogatory No. 7 and ¶ 3 of Response to Interrogatory No. 12.

Interrogatory No. 28

State the number of automobiles sold on a fleet basis by you during each month of the Time Period and state what percentage these fleet sales represented each month of the total number of new automobiles sold by you.

Response to Interrogatory No. 28

This interrogatory seeks information irrelevant to any issue in this action.

The meaning of the terms "fleet basis" and "fleet sales" is unclear.

Interrogatory No. 29

State what percentage of the number of your non-fleet sales described in your answer to the preceding interrogatory was out of your inventory or "stock" and what percentage was ordered from Your Manufacturer as a "retail" order.

Response to Interrogatory No. 29

This interrogatory seeks information irrelevant to any issue in this action.

The meaning of the term "non-fleet sales" is unclear.

Interrogatory No. 30

Identify each part of the Time Period during which you (i) had no fleet department; or (ii) were not seeking fleet business.

Response to Interrogatory No. 30

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 31

Identify and describe all communications between you and Your Manufacturer relating to:

(a) any categories of persons to whom a franchised dealer may sell new cars on a fleet basis;

(b) any categories of persons for whom franchised dealers could submit fleet orders to Your Manufacturer;

(c) any benefits to be derived by a fleet purchaser, including:

  (i) any scheduling priority of the building of ordered automobiles;

  (ii) financing by an Affiliated Finance Company or other person;

  (iii) financing or insurance reserve payments;

  (iv) purchasing of new parts at a discount;

  (v) warranty work programs or payments; and

  (vi) guaranty of car values or resale values or repurchase programs.

Response to Interrogatory No. 31

See ¶ 2 of Response to Interrogatory No. 12.

Paragraphs (c)(ii), (c)(iv) and (c)(v) seek information irrelevant to any issue in this action. With particular regard to paragraphs (c)(iv) and (c)(v), the Court has dismissed plaintiffs' claim of discrimination vis-a-vis "fleet purchasers" insofar as it related to the alleged failure to provide Nabcor with the warranty program. (Minutes, Apr. 19, 1974, at 57).

Interrogatory No. 32

State whether you or any subsidiary or affiliate engaged in the leasing of new cars, and if so, identify each of your fleet certificates or fleet numbers and the duration any fleet status has been held by you.

Response to Interrogatory No. 32

Midtown will respond to this interrogatory.

Interrogatory No. 33

As to the total number of fleet sales made by you, state the dollar amount of fleet rebates paid:

(a) by Your Manufacturer directly to your fleet customer;

(b) by Your Manufacturer directly to you;

(c) by you to your fleet customer; and

(d) any other way.

Response to Interrogatory No. 33

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 34

State in detail your reasons for entering into the fleet sales business, and identify and describe all communications between you and Your Manufacturer concerning your entry or prospective entry into the fleet business, including any communications on:

(a) the dollar amount of average gross profit which you could expect from each fleet sale;

(b) whether fleet sales were supposed to be in addition to the retail sales you were already making;

(c) whether fleet sales by you would be taking away retail sales from you or some other franchised dealer;

(d) any comparison of gross or net profits between fleet and retail sales;

(e) whether Your Manufacturer encouraged or asked you to go into the fleet business;

(f) the dollar amount and breakdown of any additional overhead you would have to incur to go into the fleet business; and

(g) who would provide warranty work or other service for fleet sales to (i) persons in your area; and (ii) persons outside of your area.

Response to Interrogatory No. 34

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 35

State the total dollar amount of expenses incurred by you each year in your fleet business for:

(a) salaries for your fleet manager and any other fleet employees;

(b) solicitation of fleet business; and

(c) any other expenses.

Response to Interrogatory No. 35

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 36

Identify each instance in which you were unable to obtain an adequate amount of floor-plan financing or were unable to obtain customer financing for any unusual number of new-car customers or fleet purchasers.

Response to Interrogatory No. 36

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 37

State whether you sold any cars on a fleet basis to Hertz, Avis or Peters, Heather & Howell ("PH&H"), and if so, identify each person who financed any sales other than sales for immediate payment; and describe the terms of non-immediate payments promised you by the purchaser; and state:

(a) the average age of receivables upon payment;

(b) your average cost of interest on a per-unit basis;

(c) your average gross profit after deducting interest costs; and

(d) how your gross profit compared to the anticipated gross profit being offered to you by Nabcor or any Nabcor franchisees.

Response to Interrogatory No. 37

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 38

Identify each of the Financial Institutions which provided you with floor-plan or customer financing, and state the rate charged to your customers by the Financial Institution (before you added any reserves).

Response to Interrogatory No. 38

This interrogatory requests information concerning financial and other relationships between and among Midtown and various banks and other financial institutions.

It is objectionable because it calls for information which is irrelevant and immaterial to any issue in this action and which cannot lead to relevant information. The only portion of the complaint to which this interrogatory could possibly relate is the boycott conspiracy counts. GM has already turned over to plaintiffs the product of a file search for documents relating to the plaintiffs, including any written communications with banks and other financial institutions. Hence, any direct evidence of communications relating to the plaintiffs has been produced. Moreover, the existence and nature of any financial relationships between Midtown and various financial institutions is not probative of whether there was a conspiracy with respect to the plaintiffs.

This interrogatory is also objectionable because it unnecessarily seeks confidential business information. See General Response No. 4.

Interrogatory No. 39

If you obtained customer financing from GMAC:

(a) state whether GMAC provided you with floor-plan financing; and

(b) state the rate charged to your customers by GMAC (before you added any reserves).

Response to Interrogatory No. 39

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 40

Identify and describe all communications between you and Your Manufacturer or its Affiliated Finance Company or any banks or other persons regarding any deposits, accounts or other funds maintained by Your Manufacturer or its Affiliated Finance Company at any bank to assist you in, or in connection with your, obtaining floor-plan financing, any capital loan, or customer financing.

Response to Interrogatory No. 40

This interrogatory calls for information which is irrelevant to any issue in this action.

See ¶ 2 of Response to Interrogatory No. 7.

Interrogatory No. 41

Does Your Manufacturer have any banking relationship with any of the banks providing you floor-plan financing, and if so, identify each such bank and describe the relationship with Your Manufacturer; and identify and describe all meetings with the bank attended by you and any Personnel of Your Manufacturer.

Response to Interrogatory No. 41

This interrogatory calls for information which is irrelevant to any issue in this action.

See ¶ 2 of Response to Interrogatory No. 7.

Interrogatory No. 42

Identify and describe each meeting with one or more members of the New York State Legislature or any other state legislature at which any discussion occurred concerning laws or proposed or suggested laws which would regulate or outlaw automobile brokers in New York State or any other state.

Response to Interrogatory No. 42

This interrogatory is objectionable on the ground that the matters with respect to which it seeks information are privileged under the First Amendment. See GM Response to Interrogatory No. 46 of interrogatories addressed to GM, Ford, Chrysler and American Motors.

Interrogatory No. 43

Describe the area in which you compete with:

(a) franchised dealers offering the same makes; and

(b) franchised dealers offering competing makes.

Response to Interrogatory No. 43

See ¶ 3 of Response to Interrogatory No. 12.

Interrogatory No. 44

State for each of the years covered by the Time Period the number of new-car (i) purchasers and (ii) leasing companies residing or having their place of business within the following number of miles from your showroom:

(a) 5 miles;

(b) 10 miles;

(c) 15 miles;

(d) 20 miles;

(e) 25 miles;

(f) 50 miles; and

(g) 100 miles or more.

Response to Interrogatory No. 44

See ¶ 3 of Response to Interrogatory No. 12

Interrogatory No. 45

Identify and describe your advertising and sales promotion program, including the annual amount spent per new car sold by you at retail and the dollar amount of advertising or sales promotion in the following media:

(a) local newspapers;

(b) other newspapers;

(c) local television;

(d) other television;

(e) local radio;

(f) other radio;

(g) magazines;

(h) local bill boards;

(i) other bill boards;

(j) telephone solicitation;

(k) direct-mail advertising; and

(l) throw-aways and handbills; and

identify and describe all of your rules and policies relating to the area in which your Personnel may advertise or solicit any category of business.

Response to Interrogatory No. 45

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

See ¶ 3 of Response to Interrogatory No. 12.

Interrogatory No. 46

Describe all periods during which any of Your Manufacturer's destination charges were (a) optional; or (b) mandatory, according to your understanding.

Response to Interrogatory No. 46

See ¶ 4 of Response to Interrogatory No. 12.

Interrogatory No. 47

State the range and approximate average dollar amount of destination charge for each type of new car purchased by you during each month of the Time Period, and the number of cars of each type so purchased by you.

Response to Interrogatory No. 47

See ¶ 4 of Response to Interrogatory No. 12.

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 48

Identify each assembly plant of Your Manufacturer which produced any of the new cars purchased by you, and the period during which the cars purchased by you were built at the assembly plant.

Response to Interrogatory No. 48

See ¶ 4 of Response to Interrogatory No. 12.

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 49

Identify each time you attempted to provide or actually provided or inquired about your right to provide your own means of transportation of new cars from Your Manufacturer's assembly plant or nearby storage area to your place of business, and as to each such time:

(a) describe all costs incurred by you to transport the new car and the number of miles of transportation involved;

(b) state the amount of the regular destination charge and how much if any of the charge was eliminated by Your Manufacturer as a result of the transportation provided by you;

(c) identify all requirements or other communications between you and Your Manufacturer relating to the amount of destination charge to be paid by you when you provided transportation yourself and whether Your Manufacturer would permit you to provide the transportation;

(d) state whether you have ever inquired about or investigated the amount you would have to pay to hire your own means of transportation or purchase your own transport vehicle for use by any employee of yours, and whether you ever inquired about any of the laws regulating such private means of new-car transportation;

(e) state whether you would have undertaken at any time to transport your own new-car purchases if allowed to do so by Your Manufacturer; and

(f) state the average time elapsed from the date the new car is released to the transportation company until the car arrives at your place of business, and identify and describe all interest and other costs incurred or expended by you during any delay.

Response to Interrogatory No. 49

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 50

Identify and describe all agreements or arrangements by you with Your Manufacturer relating to your performance of warranty work on:

(a) new cars sold by you;

(b) new cars sold by other franchised dealers in your area of responsibility;

(c) new cars sold by other franchised dealers in other areas; and

(d) new cars sold by Nabcor, any Nabcor franchisee or any Independent Dealers.

Response to Interrogatory No. 50

With respect to paragraph (d), see ¶ 1 of Response to Interrogatory No. 1.

GM will produce documents describing the obligations of GM dealers to perform warranty service on GM automobiles and the general nature of such warranties. To the extent paragraphs (a), (b) and (c) seek additional information, they seek information irrelevant to any issue in this action.

Interrogatory No. 51

Identify and describe each form of warranty and each warranty program or agreement by Your Manufacturer for each of the types of cars sold by you.

Response to Interrogatory No. 51

See Response to Interrogatory No. 50.

Interrogatory No. 52

Identify all persons who were refused warranty work by you, stating:

(a) the date of the refusal;

(b) the identity of the car owner and the make and year of car refused;

(c) whether the car was originally sold by you;

(d) all reasons for your refusal; and the reasons, if different, given to the owner;

(e) the identification of the dealer who sold the car; and

(f) the identification of all communications with Your Manufacturer concerning your refusal to provide the requested warranty work, including any reasons you gave Your Manufacturer.

Response to Interrogatory No. 52

This interrogatory seeks information which is overbroad and irrelevant to any issue in this action.

See ¶ 1 of Response to Interrogatory No. 1

Interrogatory No. 53

Identify and describe all solicitations or advertisements by you to obtain warranty work or service work not under warranty from the public.

Response to Interrogatory No. 53

See ¶ 6 of Response to Interrogatory No. 12.

Interrogatory No. 54

Identify and describe all requests made by you, any other franchised dealer or any dealer associations for Your Manufacturer to establish a program to bring customers back to the selling franchised dealer for any kind of warranty work or other repair work.

Response to Interrogatory No. 54

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 55

Identify your policy in putting the new-car warranty into the name of the purchasing leasing company or into the name of the driver or lessee fo the leased car purchased from you.

Response to Interrogatory No. 55

See Response to Interrogatory No. 50.

To the extent that this interrogatory calls for additional information, it seeks information irrelevant to any issue in this action. This interrogatory appears to relate to the possibility that Nabcor customers were denied warranty coverage by dealers at times when the GM warranty ran only to the first owner of the automobile. John Snyder, former vice president of Nabcor and an employee thereof from 1967 through 1971, testified at his deposition that it was Nabcor's policy not to provide dealers from whom Nabcor obtained cars with the names of Nabcor's retail customers and that Nabcor insisted that the dealer record automobiles obtained by Nabcor as having been sold to Nabcor. Thus, Nabcor's policy prevented dealers providing it with cars from recording Nabcor's customers as first owners of the automobiles, irrespective of whether such a practice would have been appropriate in light of Nabcor's role in the transactions. Hence, any refusals to honor warranty claims of Nabcor customers based on the fact that the first owner of record was Nabcor, not the customer, is attributable to Nabcor's actions and not to any policy of GM. Accordingly, Midtown practices with respect to leasing companies are entirely irrelevant here.

Interrogatory No. 56

Are warranty payments sufficiently high to encourage you to solicit or accept warranty work from persons who purchase the new car:

(a) from you;

(b) from any other franchised dealer; or

(c) Nabcor, any Nabcor franchisee or any Independent Dealers.

Response to Interrogatory No. 56

See ¶ 6 of Response to Interrogatory No. 12.

Interrogatory No. 57

State whether you understand that you are obliged to perform all warranty work offered to you on cars of the same type as you are franchised to sell.

Response to Interrogatory No. 57

See Response to Interrogatory No. 50.

Interrogatory No. 58

On chargebacks by Your Manufacturer of warranty payments made to you but based, according to Your Manufacturer, on faulty workmanship by you or duplication of work:

(a) state whether you customarily charge back the payment to your mechanic;

(b) state how you absorb any loss;

(c) state whether you obtain reimbursement in some other way, in which case explain in detail;

(d) identify all documents relating to chargebacks for duplication or faulty workmanship; and

(e) identify each of your Personnel who is responsible for preparation or review of your claims for warranty payments.

Response to Interrogatory No. 58

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 59

At all times during the Time Period, state the dollar amount of your shop rate on an hourly basis:

(a) for warranty work; and

(b) for non-warranty work.

Response to Interrogatory No. 59

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 60

State the dollar amount, on an annual basis, of:

(a) all repair work jobbed out as to (i) warranty work; and (ii) non-warranty work; and

(b) all parts purchased from suppliers other than Your Manufacturer as to (i) warranty work; and (ii) non-warranty work.

Response to Interrogatory No. 60

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 61

State the average dollar amount of warranty work on each type of car sold by you.

Response to Interrogatory No. 61

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 62

State whether Your Manufacturer ever advised you that your warranty work claims were in excess of the national average, and if your answer is in the affirmative:

(a) identify and describe all relevant communications; and

(b) state whether your warranty work average ever came down to or below the national average.

Response to Interrogatory No. 62

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 63

Identify and describe all types of warranty work for which you were required at any time during the Time Period to obtain approval from Your Manufacturer before performance of the requested warranty work.

Response to Interrogatory No. 63

This interrogatory seeks information irrelevant to any issue in this action.

Interrogatory No. 64

State whether you were ever required to obtain approval of Your Manufacturer for any kind of warranty work on cars purchased from or through Nabcor, any Nabcor franchisee or any types of Independent Dealers.

Response to Interrogatory No. 64

See ¶ 1 of Response to Interrogatory No. 1 and Response to Interrogatory No. 50.

Interrogatory No. 65

Identify and describe all communications between you and Your Manufacturer relating to your area of sales responsibility, as defined in your sales or franchise agreement; and

(a) identify each sales or franchise agreement, including each amendment thereto;

(b) describe all areas in which Your Manufacturer allowed you to advertise new cars;

(c) state whether you believed (whether correctly or incorrectly) that you were not allowed to advertise or solicit the selling of new cars in any particular areas, and state each basis for any such belief;

(d) state whether you could sell a car on a (i) fleet or (ii) retail basis for delivery into another area;

(e) state whether you believed (whether correctly or incorrectly) that you were not permitted to deliver a new car outside of your territory for any specific category of customer, and state each basis for any such belief;

(f) identify and describe how Your Manufacturer evaluates your performance as a franchised dealer;

(g) identify and describe each way in which a car sold or delivered to a person living outside of your area could adversely affect your performance rating;

(h) identify each communication or request by Your Manufacturer for you to increase your sales in your area;

(i) identify all of your sales requirements in your area established by or with the participation of Your Manufacturer;

(j) state the number of cars if any in excess of such requirements you were able to obtain from Your Manufacturer; and

(k) identify and describe all communications between you and other dealers franchised by Your Manufacturer relating to Your Manufacturer's policy of providing any form of direct or indirect territorial protection to its franchised dealers.

Response to Interrogatory No. 65

See ¶ 3 of Response to Interrogatory No. 12.

Interrogatory No. 66

Identify all purchasers from you by your leasing division, subsidiary or affiliate ("Leasing Division"), and state:

(a) the number of such cars put out on lease; and

(b) the number of cars sold by your Leasing Division, and the number of months elapsed between delivery of each car to you and the sale by your Leasing Division.

Response to Interrogatory No. 66

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 67

Describe your advertising and solicitation program with respect to the marketing of new-car leases.

Response to Interrogatory No. 67

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action. There is no suggestion that plaintiffs compete with Midtown.

Interrogatory No. 68

Identify each person who inquired about buying a new car who subsequently leased a new car from your Leasing Division, and

(a) state the date of the lease and the make and year of the leased car; and

(b) state whether the car came from stock or was ordered from Your Manufacturer on a fleet or retail basis.

Response to Interrogatory No. 68

See Response to Interrogatory No. 67.

Interrogatory No. 69

Identify all documents (i) analyzing the market for the leasing of new cars; and (ii) comparing sales and leasing of new cars.

Response to Interrogatory No. 69

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 70

Describe each way in which you compete with leasing companies or your Leasing Division in your business of selling new cars.

Response to Interrogatory No. 70

Midtown will respond to this interrogatory.

Interrogatory No. 71

State the amount of capital Your Manufacturer required or suggested that you have to start your dealership, and state how much additional capital you were required to add to your business, and describe in detail all reasons for the required capital additions, if any.

Response to Interrogatory No. 71

Not applicable to Midtown.

Interrogatory No. 72

State the amount of your net profits for each of the years covered by the Time Period, and state the rate of return this represented on the amount of invested capital at such time.

Response to Interrogatory No. 72

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks information of a confidential nature.

Interrogatory No. 73

Identify each threat by Your Manufacturer to terminate or fail to renew your franchise, for any reason, and identify all communications relating thereto.

Response to Interrogatory No. 73

Not applicable to Midtown.

Interrogatory No. 74

State who owns the good will of your business upon termination, cancellation or non-renewal of your franchise, and the estimated dollar amount of loss this would mean to you as of this day.

Response to Interrogatory No. 74

Not applicable to Midtown.

Interrogatory No. 75

Describe how your expense structure permits you to make any profits on your new-car business, and state your:

(a) cost per retail unit of sale;

(b) overhead expense per unit;

(c) sales commission per unit;

(d) management cost per unit;

(e) advertising cost per unit;

(f) rent per unit; and

(g) any other expenses per unit.

Response to Interrogatory No. 75

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks information of a confidential nature.

Interrogatory No. 76

Identify and describe all complaints by you about Your Manufacturer or your franchise to (a) any franchised dealers; (b) any dealer associations; (c) Your Personnel; (d) Your Manufacturer; or (e) any other person.

Response to Interrogatory No. 76

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 77

State the aggregate dollar amount of reserves paid to you on the (i) financing and (ii) insurance for new cars, and identify each person who paid you any reserves.

Response to Interrogatory No. 77

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks information of a confidential nature.

Interrogatory No. 78

State the annual dollar amount of gross profits on your used-car sales.

Response to Interrogatory No. 78

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks information of a confidential nature.

Interrogatory No. 79

Identify and describe all documents presenting or referring to:

(a) the profits or losses of any franchised dealers of Your Manufacturer; and

(b) statistics on franchised dealer bankruptcies, insolvencies or other business failures or terminations.

Response to Interrogatory No. 79

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks information of a confidential nature.

Interrogatory No. 80

Identify and describe all acquisitions of dealerships by Your Manufacturer in your area which resulted in any decline in business for you, and state each way in which the acquisition adversely affected your business.

Response to Interrogatory No. 80

This interrogatory is objectionable because if calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks information of a confidential nature.

Interrogatory No. 81

(TO BE ANSWERED BY CHEVROLET OR PONTIAC DEALERS ONLY)

Describe each way in which GM's acquisition of Don Allen Chevrolet, Inc. adversely affected your business.

Response to Interrogatory No. 81

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks information of a confidential nature

This interrogatory is not applicable to Midtown Chevrolet which is the successor to Don Allen Chevrolet, Inc.

Interrogatory No. 82

Describe how the advertising contribution or charge appearing on Your Manufacturer's invoice to you (the "Advertising Contribution") is assessed and collected, including any participation by Your Manufacturer or any dealers or dealer associations, and identify and describe all documents relating to the Advertising Contribution.

Response to Interrogatory No. 82

See ¶ 5 of Response to Interrogatory No. 12.

In particular, GM has produced one or more factory invoices on automobiles allegedly obtained by plaintiffs from Midtown. The invoices show that no advertising contribution was collected on the automobiles allegedly obtained by Nabcor.

Interrogatory No. 83

State whether you are required by Your Manufacturer or any other person to be a member of any dealer association at any time during the Time Period; and if so, identify which dealer associations to which you were required to become a member and identify each person requiring such membership and the circumstances underlying the requirement.

Response to Interrogatory No. 83

Not applicable to Midtown.

Interrogatory No. 84

State whether the Advertising Contribution is required to be collected from you:

(a) by Your Manufacturer; and

(b) as a condition to membership in any of the dealer associations described in answer to the preceding interrogatory or any other dealer associations.

Response to Interrogatory No. 84

See ¶ 5 of Response to Interrogatory No. 12.

Interrogatory No. 85

State the amount of the Advertising Contribution for each type of new car bought by you.

Response to Interrogatory No. 85

See ¶ 5 of Response to Interrogatory No. 12

Interrogatory No. 86

Identify each instance in which you had the right to withdraw from any proposed expenditures of any pooled fund of Advertising Contributions (including yours) by any dealer association of which you were a member.

Response to Interrogatory No. 86

See ¶ 5 of Response to Interrogatory No. 12.

Interrogatory No. 87

State whether leasing companies or any other fleet purchasers are required to pay the Advertising Contribution at any time during the Time Period and if so, state whether they are able to obtain a refund or rebate of the contribution from Your Manufacturer or through you. Explain in detail.

Response to Interrogatory No. 87

See ¶ 5 of Response to Interrogatory No. 12.

This interrogatory calls for information irrelevant to any issue in this action.

Interrogatory No. 88

Identify all communications between you and any of the Defendant BBB's or the Association of Better Business Bureaus International (the "International BBB") during the Time Period relating to:

(a) any franchised dealers or Independent Dealers;

(b) any complaints against Nabcor or any Nabcor franchisee;

(c) any investigation of Nabcor, any Nabcor franchisee or any Independent Dealers;

(d) the NADA "Recommended Advertising and Selling Standards" or any standards or code of ethics of any other association of automobile dealers;

(e) any grand jury investigation;

(f) any warranty programs or problems;

(g) territorial protection for franchised dealers;

(h) "bootlegging" of new cars by any persons;

(i) fleet programs of any of the Defendant Automobile Manufacturers;

(j) the evaluation of performance of franchised dealers by any of the Defendant Automobile Manufacturers; and

(k) the advertising of any dealer which has lost its franchise from any of the Defendant Automobile Manufacturers.

Response to Interrogatory No. 88

With respect to paragraphs (a), (b), (c) and (h), see ¶ 2 of Response to Interrogatory No. 2.

With respect to paragraphs (b) and (c), see ¶ 1 of Response to Interrogatory No. 1.

Paragraphs (a) and (d) through (k) are objectionable on the ground that they call for information irrelevant to any issue in this action.

Interrogatory No. 89

Identify each of your Personnel who at any time was a member of the Board of Directors or any advisory boards of, or was an advisor or consultant to, any of the Defendant BBB's relating in whole or in part to the advertising, financing, servicing, leasing or selling of new automobiles to the public, and as to each of such Personnel:

(i) state his title and function with you;

(ii) identify his immediate superior at all times, including the superior's title and function with you;

(iii) state the name of the Defendant BBB involved;

(iv) state the position or function with the Defendant BBB of any such Personnel;

(v) state the date of each appointment or reappointment to the BBB;

(vi) state the date of termination of such person's position with the BBB;

(vii) state the identity of each person who made or approved the nomination or appointment or requested or approved any termination;

(viii) describe any instructions, rules, procedures or suggestions given by you relating to the position or function with the Defendant BBB (in lieu of any description contained in any documents, defendant may attach a copy of each relevant document); and

(ix) identify each person who prepared, reviewed, approved or issued any such instructions, rules, procedures or suggestions.

Response to Interrogatory No. 89

Midtown will respond to this interrogatory.

Interrogatory No. 87*

Identify each communication by you (including any meetings involving any of your Personnel concerning):

(a) the appointment of directors, advisors or consultants to any of the Defendant BBB's or

(b) the policy of any of the Defendant BBB's relating to the advertising, financing, servicing, leasing selling of new cars by franchised dealers, leasing companies or Independent Dealers.

Response to Interrogatory No. 87*

Paragraph (a) of this interrogatory seeks information irrelevant to any issue in this action.

With respect to paragraph (b) of this interrogatory, see ¶ 1 of Response to Interrogatory No. 1 and ¶ 2 of Response to Interrogatory No. 2.

Interrogatory No. 88*

Identify each of your Personnel who directed or decided that you should request information about Nabcor, any Nabcor franchisee or any Independent Dealers from any of the Defendant BBB's or any other Better Business Bureaus.

Response to Interrogatory No. 88*

See ¶ 1 of Response to Interrogatory No. 1, ¶ 2 of Response to Interrogatory No. 2 and ¶ 2 of Response to Interrogatory No. 7.

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* Second interrogatory with this number

Interrogatory No. 89*

Identify each person (other than any attorney acting solely in such capacity) who directed or participated in any file search for documents for production in this action.

Response to Interrogatory No. 89*

Midtown will respond to this interrogatory.

Interrogatory No. 90

Identify each person and document consulted or used in the preparation of the answers to any of the above interrogatories.

Response to Interrogatory No. 90

Midtown will respond to this interrogatory insofar as it relates to persons consulted.

This interrogatory is objectionable insofar as it relates to documents on the ground that it is unduly burdensome.

Dated: September 18, 1974

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By s/ Martin Kleinbard
Martin Kleinbard
Attorneys for Defendant
General Motors Corporation (sued herein in its own right and as Midtown Chevrolet, Inc.)
345 Park Avenue
New York, New York 10022
(212) 644-8000

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* Second interrogatory with this number

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, DONALD S. SOMERS, being duly sworn, says:

I am Branch Manager of Midtown Chevrolet-Pontiac.

I have read the answers to plaintiffs; interrogatories contained in the responses numbered 13, 18 and 26 and state that they are true to the best of my information and belief.

s/ Donald S Somers
Donald S. Somers

Sworn to before me this
18th day of September, 1974.

s/ Vitold J. de Stronie

VITOLD J. de STRONIE
Notary Public, State of New York
No. 41-4517577
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants.

70 Civ. 5421A (TPG)

GMAC'S ANSWERS AND OBJECTIONS TO PLAINTIFFS' INTERROGATORIES

These are answers and objections of defendant General Motors Acceptance Corporation ("GMAC") to plaintiffs' interrogatories addressed to GMAC, dated July 19, 1974.

Preliminary Statement

One of the seven sets of interrogatories served by plaintiffs in July is addressed exclusively to GMAC.

GMAC is but one of 61 defendants originally charged in the complaint with a conspiracy to boycott plaintiffs. (Cpt. ¶ 54, at 14; ¶ 111(B)(5), at 31-32) The complaint makes only one specific allegation concerning GMAC's role in the conspiracy:

> In 1967-68, GENERAL MOTORS ACCEPTANCE CORPORATION unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to Nabcor's customers, either directly or through Nabcor, and deny to Defendant Matt Slap Chevrolet, Inc. the benefits of an automobile lease-financing program of Defendant General Motors Acceptance Corporation

> solely because Defendant Matt Slap Chevrolet, Inc. intended to supply the leased automobiles to Natcor, for the purpose of eliminating Natcor and its franchisees as competitors of GM-franchised dealers who were obtaining automobile financing from Defendant General Motors Acceptance Corporation.
>
> (Complaint paragraph 112A(mm) at 44-45).

GMAC is one of 20 financial institutions named as defendants or co-conspirators. The Court has already ruled on the scope of discovery permissible against one of the other financial institution defendants, First National City Bank ("Citibank"). In response to plaintiffs' request for production by Citibank of voluminous documents concerning the bank's relationships with automobile manufacturers and dealers and the profitability to Citibank of various types of transactions, the Court refused to allow plaintiffs to have broad discovery unrelated to the specific, alleged refusal to deal by Citibank. (Minutes, July 12, 1974, at 51; April 29, 1974, at 38-41; April 12, 1974 at 26). Discovery against GMAC should be similarly limited.

General Response

GMAC specifically objects to many of these interrogatories on the ground that they call for information that is not relevant to any issue in this action. However, in the interest of expedition, GMAC will answer those interrogatories which can reasonably be answered and has produced documents containing information sought by plaintiffs. By responding to these interrogatories, either fully or partially, GMAC does not waive its objection to them.

Specific Responses

Interrogatory No. 1

Identify and describe each communication between Nabcor and GMAC concerning any Nabcor request for a loan of any type or for Nabcor customer financing.

Response to Interrogatory No. 1

1. This interrogatory, as well as interrogatories 2, 3, 4, 6, and 7, require GMAC to identify and describe communications with or about plaintiffs and documents concerning plaintiffs. GMAC has already answered these interrogatories in substantial part in that it has conducted an extensive file search designed to locate documents relating to Nabcor or any of the plaintiffs and has produced the documents* located by that search. Thus plaintiffs already have written communications with them and relating to them.

2. To the extent that these interrogatories require GMAC to discover the existence of oral communications and to give written accounts of these communications, they are objectionable for the following reasons:

(a) The document production combined with plaintiffs' own knowledge have enabled plaintiffs to identify those GMAC employees whom plaintiffs apparently believe may have knowledge or information relevant to this action.** Plaintiffs have stated their intention to take depositions of these employees. (Statement by Plaintiffs Identifying Officials and Employees of Defendants Intended to be Deposed, dated July 25, 1974) Requiring GMAC to prepare second-hand written summaries of conversations that will doubtless be inquired into during plaintiffs' depositions would be unduly burdensome in these circumstances and serve no useful purpose.

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* Other than privileged documents.

** These employees are listed in Interrogatory 14 (A) of the interrogatories addressed to the four automobile manufacturer defendants, dated July 19, 1974.

(b) To the extent that these interrogatories seek information concerning conversations participated in by GMAC employees whose names have not surfaced in the documents or elsewhere in this litigation, they are objected to in that compliance would be unduly costly and burdensome and because there is no reason to believe that compliance would produce any useful information whatever.

Interrogatory No. 2

Identify and describe each communication between GMAC and General Motors Corporation ("GM") concerning any Nabcor request for a loan of any type or for Nabcor customer financing.

Response to Interrogatory No. 2

See Response to Interrogatory No. 1.

Interrogatory No. 3

Identify and describe each communication between GMAC and Matt Slapp Chevrolet, Inc. and between GMAC and Central Penn National Bank (Philadelphia, Pa.) during 1968-9 concerning Nabcor's request for fleet financing.

Response to Interrogatory No. 3

See Response to Interrogatory No. 1.

Interrogatory No. 4

Identify and describe all communications between GMAC and any other persons during 1968-9 relating to Nabcor, any of the other plaintiffs, or the credit of Nabcor or any of the other plaintiffs.

Response to Interrogatory No. 4

See Response to Interrogatory No. 1.

Interrogatory No. 5

Identify each officer, director, employee or advisor of GMAC who participated to any extent in any analysis, consideration, review or rejection of any Nabcor laon requests of any kind or Nabcor request for customer financing.

Response to Interrogatory No. 5

The following GMAC employees participated in consideration of Nabcor's 1968 request for financing:

F. V. Blesse
Senior Staff Assistant
General Motors Acceptance Corporation
767 Fifth Avenue
New York, New York 10022

J. J. Musselman
Regional Manager - New York Region
General Motors Acceptance Corporation
767 Fifth Avenue
New York, New York 10022

W. F. Miller (retired)
20 Rebbelwood Drive
Media, Pennsylvania 19063

Interrogatory No. 6

Identify and describe in detail each communication by any officer, director, employee, agent or advisor of GMAC with any other officer, director, employee, agent or advisor of GMAC about any Nabcor loan requests or Nabcor requests for customer financing.

Response to Interrogatory No. 6

See Response to Interrogatory No. 1.

Interrogatory No. 7

Identify and describe in detail each communication by any officer, director, employee, agent or attorney of GMAC with any defendant or co-conspirator named in the complaint or any other franchised dealer, automobile dealer association, bank or other finance company, newspaper, better business bureau, motor vehicle bureau; federal, state or local agency; or credit bureau about Nabcor, Nabcor East or any other plaintiff.

Response to Interrogatory No. 7

1. See Response to Interrogatory No. 1.

2. This Interrogatory, as well as Interrogatories 71 through 73 and 76 through 78, calls for the identification of communications between GMAC and other persons which are not named as defendants or co-conspirators in the complaint. Since GMAC has already produced its documents relating to the plaintiffs, and since communications with such third persons cannot be part of the conspiracy alleged in the complaint, these interrogatories are objectionable as they seek information irrelevant and immaterial to any issue in this action.

Interrogatory No. 8

Identify and describe all of your policies for the extension of floor-plan financing or other loans of any kind to automobile dealers.

Response to Interrogatory No. 8

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing some or all of the information sought by this interrogatory are available for inspection by plaintiffs.

Interrogatory No. 9

Identify and describe your policy as applied to Nabcor's request for financing, and explain any differences in policy from the policies described in answer to the preceding interrogatory.

Response to Interrogatory No. 9

Nabcor's request for financing from GMAC was dealt with in accordance with GMAC's usual policies.

Interrogatory No. 10

Identify and describe all communications between GM and GMAC concerning any limitation or other restriction of new-car sales by GM franchised dealers to the area of responsibility assigned to such dealer in his sales agreement with GM.

Response to Interrogatory No. 10

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

None.

Interrogatory No. 11

Does GMAC obtain from GM or the GM franchised dealers any description of the dealer's assigned area of responsibility?

Response to Interrogatory No. 11

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

No.

Interrogatory No. 12

Identify each person (including any boards or groups) giving advice on a full or part-time basis (including independent contractors) to GMAC about the financing of new cars to be purchased or leased by franchised dealers, leasing companies, other fleet purchasers or new-car brokers or dealers not franchised by the manufacturer, and as to each such person describe the subject matter of any consultation or advice rendered to GMAC during 1966-7 and identify each communication with respect thereto.

Response to Interrogatory No. 12

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

GMAC used no outside group for consultation.

Interrogatory No. 13

Identify each officer, director, employee or agent of GMAC to whom any advice or communication described in answer to the preceding interrogatory was given or made, identifying such advice or communication.

Response to Interrogatory No. 13

Not applicable.

Interrogatory No. 14

State the total dollar amount and number of automobiles with respect to all automobile floor-plan financing provided by GMAC during each month of 1966, 1967 and 1968 to automobile dealers franchised by GM (separately stated for foreign-made cars of domestic manufacturers), by division, as to:

(a) new GM cars;
(b) current model used GM cars;
(c) other used GM cars;
(d) new Ford cars;
(e) current model used Ford cars;
(f) other used Ford cars;
(g) new Chrysler cars;
(h) current model used Chrysler cars;
(i) other used Chrysler cars;
(j) new AMC cars;
(k) current model used AMC cars;
(l) other used AMC cars;
(m) new cars of other domestic manufacturers;
(n) current model used cars of other domestic mfrs;
(p) other used cars of other domestic manufacturers;
(q) new cars of foreign mfrs (not included above);
(r) current model used cars of foreign mfrs (not incl above);
(s) other used cars of foreign mfrs (not incl above);

and state the number of dealers obtaining floor-plan financing and the average rate of interest for each of subparagraphs (a) through (s) above.

Response to Interrogatory No. 14

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information sought by this interrogatory are available for inspection by the plaintiffs.

The information sought is not ordinarily available on a divisional basis or with respect to the products of specific manufacturers other than GM. Accordingly, this interrogatory is objectionable on the ground that it is unduly burdensome.

Interrogatory No. 15

Answer the preceding interrogatory for automobile dealers franchised by:

(a) Ford;
(b) Chrysler;
(c) AMC;
(d) all other domestic automobile manufacturers; and
(e) all foreign manufacturers (not included above).

Response to Interrogatory No. 15

This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 16

Answer Interrogatory No. 14 above for automobile dealers not franchised by any manufacturer, identifying each dealer and stating whether such dealer was the holder of a GM fleet certificate.

Response to Interrogatory No. 16

This interrogatory calls for information irrelevant to any issue in this action.

Interrogatory No. 17

Explain why floor-plan financing is not (if true) provided for:

(a) any of the categories of transactions described in subparagraphs (a) through (s) of Interrogatory No. 14 above;

(b) any of the categories of franchised dealers described in subparagraphs (a) through (e) of Interrogatory No. 15 above; and

(c) the category of dealers described in Interrogatory No. 16 above.

Response to Interrogatory No. 17

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information sought by this interrogatory are available for inspection by plaintiffs.

Interrogatory No. 18

State the total dollar amount and number of automobiles with respect to all financing provided by GMAC during each month of 1966, 1967 and 1968 to retail purchasers of automobiles from dealers franchised by GM, separately stated as to each of the categories described above in subparagraphs (a) through (s) of Interrogatory No. 14, and state the average rate of interest for each of said subparagraphs (a) through (s).

Response to Interrogatory No. 18

In accordance with the General Response, GMAC states that it does not extend credit to retail purchasers of automobiles. It purchases retail instalment obligations covering sales of new automobiles. Documents containing certain information with respect to such purchases are available for inspection by plaintiffs.

Interrogatory No. 19

Answer the preceding interrogatory for automobile dealers franchised by:

(a) Ford;
(b) Chrysler;
(c) AMC;
(d) all other domestic automobile manufacturers; and
(e) all foreign manufacturers (not included above).

Response to Interrogatory No. 19

Subject to the General Response, GMAC states that it does not purchase retail instalment obligations covering sales of new automobiles from persons other than dealers franchised by GM. See also response to interrogatory 18.

Interrogatory No. 20

Answer Interrogatory No. 18 above for automobile dealers not franchised by any manufacturer, identifying each dealer and stating whether such dealer was the holder of a GM fleet certificate.

Response to Interrogatory No. 20

See responses to interrogatories 18 and 19.

Interrogatory No. 21

State the total dollar amount and number of automobiles with respect to all financing provided by GMAC during each month of 1966, 1967 and 1968 to leasing companies, separately stated as to each of the categories described above in subparagraphs (a) through (s) of Interrogatory No. 14, and stating the average rate of interest for each of said subparagraphs (a) through (s).

Response to Interrogatory No. 21

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 22

State the total dollar amount and number of automobiles with respect to all financing provided by GMAC during each month of 1966, 1967 and 1968 to leasing companies which did not have a GM fleet certificate or qualify for a GM fleet certificate, separately stated as to each of the categories described above in subparagraphs (a) through (s) of Interrogatory No. 14, identifying each such leasing company, and stating the average rate of interest for each of said subparagraphs (a) through (s).

Response to Interrogatory No. 22

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 23

State the total dollar amount and number of automobiles with respect to all financing provided by GMAC during each month of 1966, 1967 and 1968 to daily rental companies which did have or qualify for a GM fleet certificate, separately stated as to each of the categories described above in subparagraphs (a) through (s) of Interrogatory No. 14, and stating the average rate of interest for each of said subparagraphs (a) through (s).

Response to Interrogatory No. 23

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 24

State the total dollar amount and number of automobiles with respect to all financing provided by GMAC during each month of 1966, 1967 and 1968 to daily rental companies which did not have a GM fleet certificate or qualify for a GM fleet certificate, separately stated as to each of the categories described above in subparagraphs (a) through (s) of Interrogatory No. 14, identifying each such daily rental company, and stating the average rate of interest for each of said subparagraphs (a) through (s).

Response to Interrogatory No. 24

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 25

State the total dollar amount and number of automobiles with respect to all financing provided by GMAC during each month of 1966, 1967 and 1968 to fleet users which did have or qualify for a GM fleet certificate, separately stated as to each of the categories described above in subparagraphs (a) through (s) of Interrogatory No. 14, and stating the average rate of interest for each of said subparagraphs (a) through (s).

Response to Interrogatory No. 25

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "fleet users". See paragraph 2 of Response of General Motors Corporation to Interrogatory No. 30 addressed to GM, Ford, Chrysler and American Motors.

Interrogatory No. 26

State the total dollar amount and number of automobiles with respect to all financing provided by GMAC during each month of 1966, 1967 and 1968 to fleet users which did not have a GM fleet certificate or qualify for a GM fleet certificate, separately stated as to each of the categories described above in subparagraphs (a) through (s) of Interrogatory No. 14, identifying each such fleet user, and stating the average rate of interest for each of said subparagraphs (a) through (s).

Response to Interrogatory No. 26

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "fleet users".

Interrogatory No. 27

Identify and describe each automobile financing program of any kind (floor-plan, customer or other) available at any time during 1966, 1967 or 1968 to:

(a) Dealers franchised by GM;
(b) Dealers franchised by Ford;
(c) Dealers franchised by Chrysler;
(d) Dealers franchised by AMC;
(e) Dealers franchised by any other domestic manufacturer;
(f) Dealers franchised by any foreign manufacturer (not included above);
(g) Dealers not franchised by GM or any other manufacturer;
(h) any holders of a GM fleet user certificate;
(i) any holders of a GM fleet lessee certificate;
(j) any other person not described above (specify).

Response to Interrogatory No. 27

In accordance with the General Response, documents containing certain of the information sought by this interrogatory are available for inspection by plaintiffs.

Interrogatory No. 28

Identify and describe each non-automobile financing program of any kind available at any time during 1966, 1967 or 1968.

Response to Interrogatory No. 28

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 29

Identify and describe each financing plan available (during any part of 1966-8) only to holders of a GM fleet certificate or persons who qualified therefor.

Response to Interrogatory No. 29

GMAC will respond to this interrogatory insofar as it seeks information relating to financing available to persons qualified for a GM fleet certificate during 1968. To the extent that this interrogatory seeks additional information, it is objectionable on the ground that such information is irrelevant to any issue in this action.

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Interrogatory No. 30

State each of your reasons for not making to persons not qualified for a fleet certificate each of the financing plans described in answer to the preceding interrogatory.

Response to Interrogatory No. 30

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

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Interrogatory No. 31

Identify and describe each communication between GM and GMAC relating to any actual or possible requirement of a GM fleet certificate as a condition to obtaining GMAC financing.

Response to Interrogatory No. 31

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this Interrogatory:

None.

Interrogatory No. 32

Identify and describe each instance wherein the board of directors of GMAC has approved the requirement of a GM fleet certificate as a condition to obtaining GMAC financing under any GMAC program, and identify each of the members of the board who were present at the meeting.

Response to Interrogatory No. 32

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

None.

Interrogatory No. 33

State whether floor-plan financing itself for GM franchised dealers, without customer financing by GMAC, is profitable business for GMAC.

Response to Interrogatory No. 33

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

Interrogatory No. 34

If the business is unprofitable, explain in detail why GMAC maintained such business.

Response to Interrogatory No. 34

See response to interrogatory No. 33.

Interrogatory No. 35

Identify each GM franchised dealer or other dealer or person for which GMAC terminated any floor-plan financing, identifying the category of each such terminated person.

Response to Interrogatory No. 35

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable on the ground of burdensomeness. GMAC does not have this information in any central locations. To answer this interrogatory, it would be necessary for GMAC to contact each branch to learn of each branch's history of termination.

Interrogatory No. 36

Identify each franchised dealer not then floor-planned by GMAC for whom GMAC did provide customer financing (a) with and (b) without reserves (separately stated).

Response to Interrogatory No. 36

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 37

Identify and describe all GMAC programs for the payment of financing reserves as to each category of dealer described in subparagraphs (a) through (g) of Interrogatory No. 27 above.

Response to Interrogatory No. 37

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 38

State the net profits of GMAC for each quarter from January 1, 1965 to the present, as follows:

(a) excluding all subsidiaries of GMAC; and
(b) including all consolidated subsidiaries.

Response to Interrogatory No. 38

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 39

State the net worth of GMAC on an unconsolidated basis (excluding the value of subsidiaries) at the end of each fiscal year from 1965 to 1973.

Response to Interrogatory No. 39

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

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Interroratory No. 40

State the average amount of GMAC indebtedness during each of the fiscal years from 1965 to 1973.

Response to Interrogatory No. 40

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 41

Identify and describe each complaint made to GMAC by any Banks or other banks, Financial Institutions or other companies financing automobile transactions, GM franchisees or other automobile dealers, leasing companies or other non-qualified leasing companies, Defendant Automobile Manufacturers, governmental agencies or others relating to the rates of interest being offered by GMAC on any type of automobile financing transaction.

Response to Interrogatory No. 41

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 42

Identify and describe each investigation of GMAC interest rates by any governmental agency.

Response to Interrogatory No. 42

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 43

State the average cost to GMAC of each category of indebtedness incurred by GMAC.

Response to Interrogatory No. 43

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 44

State the average cost of indebtedness used by GMAC in calculating its interest charges (at all times during the Time Period covered by these interrogatories), and describe in detail how the average cost was calculated.

Response to Interrogatory No. 44

This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

Interrogatory No. 45

Identify and describe all periodic reports received by GMAC from GM, any GM franchisees, banks or others, including but not limited to:

(a) reports on financial condition of dealers;
(b) notices to cancel lines of credit;
(c) information on the amount of financing reserves paid to dealers by banks or others;
(d) information on the amount of insurance reserves paid to dealers by insurance companies, including any subsidiaries of GM or GMAC;
(e) information on interest rates charged by banks or other financial institutions for customer financing;
(f) information on interest rates charged by banks or other financial institutions for floor-plan financing of dealers; and
(g) statistics on repossession rates and loss experience on resales of repossessed cars.

Response to Interrogatory No. 45

In accordance with the General Response Rule 33(c), Fed. R. Civ. P, documents containing certain information called for by paragraphs (a), (c) and (d) of this interrogatory are available for inspection by plaintiffs.

In accordance with the General Response, GMAC is willing to provide plaintiffs with answers to paragraphs (b), (e), (f) and (g) of this interrogatory:

(b) None.

(e) None.

(f) None.

(g) None.

Interrogatory No. 46

Describe any relationship your interest rates on (a) floor-plan financing and (b) customer financing may have with interest rates charged by banks or other financial institutions as to each of the transactions described in subparagraphs (a) through (s) of Interrogatory No. 14 above, as to

(i) transactions involving reserve payments; and

(ii) transactions involving no reserve payments (including all floor-plan financings presumably).

Response to Interrogatory No. 46

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 47

Does GMAC have a policy of offering either (a) lower or (b) higher interest rates on new-car customer financing than the interest rates being offered by local banks and other financial institutions.

Response to Interrogatory No. 47

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 48

If GMAC does have a policy of offering either lower or higher interest rates (as described in answer to the preceding interrogatory) describe in detail the policy.

Response to Interrogatory No. 48

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 49

Identify and describe any GMAC uniform national rates of interest on any category of automobile financing, as the categories are described in subparagraphs (a) through (s) of Interrogatory No. 14 above. For each category for which GMAC does not have a uniform national policy, describe the policy in detail.

Response to Interrogatory No. 49

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 50

Describe your losses on car repossessions and resales as a percentage and dollar amount on each category of transaction described in subparagraphs (a) through (s) of Interrogatory No. 14 above. The percentage is calculated by dividing the amount of the loss by the amount of the loan.

Response to Interrogatory No. 50

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable on the ground that the information sought is not normally compiled and compliance would be unduly burdensome.

Interrogatory No. 51

Describe how your loss ratio compares with the loss ratio of banks and other financial institutions as to each of the categories of automobile financings described in subparagraphs (a) through (s) of Interrogatory No. 14 above.

Response to Interrogatory No. 51

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable on the ground that the information sought is not normally compiled and compliance would be unduly burdensome.

Interrogatory No. 52

Identify and describe any communications by GMAC with any banks or other financial institutions relating to the rates of interest for dealer floor-planning or for customer financing.

Response to Interrogatory No. 52

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

None.

Interrogatory No. 53

Describe all agreements and communications between GM and GMAC relating to the capital or floor-plan financing of dealers franchised by GM or AMC.

Response to Interrogatory No. 53

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 54

Explain in detail why GMAC is providing floor-plan and capital financing to AMC dealers and financing to customers of AMC dealers, and identify each person in GM or GMAC and AMC who participated in or approved any of these arrangements.

Response to Interrogatory No. 54

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

Interrogatory No. 55

Compare the profitability to GMAC of all such AMC business described in answer to the preceding interrogatory in relation to all other business of GMAC.

Response to Interrogatory No. 55

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 56

State the dollar amount of all losses sustained by GMAC on loans to AMC dealers, identifying each AMC dealer and each person who reviewed or approved the AMC dealer's application for GMAC financing.

Response to Interrogatory No. 56

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 57

Identify and describe all arrangements or agreements between GMAC and AMC or GM relating to any guaranty or loans made by GMAC to AMC dealers or customers thereof.

Response to Interrogatory No. 57

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

Interrogatory No. 58

Identify and describe all arrangements or agreements under which GM is to approve any financing by GMAC of any GM dealers or any GM fleet certificate holders.

Response to Interrogatory No. 58

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

There are no such arrangements or agreements.

Interrogatory No. 59

Identify and describe all arrangements or agreements under which GM guaranties any loans made by GMAC.

Response to Interrogatory No. 59

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

There are no such arrangements or agreements.

Interrogatory No. 60

Explain why (if it is true) GMAC charges a higher rate of interest for the financing of retail purchasers of used cars than it charges on new-car financings when

(a) the collateral value is higher as a percentage of the loan for the used-car transaction;

(b) the collateral value is the same as a percentage of the loan for the used-car transaction; and

(c) the collateral value is lower as a percentage of the loan for the used-car transaction.

Response to Interrogatory No. 60

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

Interrogatory No. 61

Describe in detail how the interest rates for each of the transactions described in subparagraphs (a) through (s) of Interrogatory No. 14 have been determined by GMAC at all times during the Time Period as to (a) floor-plan financing; and (b) customer financing; and (c) any direct financing by GMAC, including each of the factors which are involved in the formula.

Response to Interrogatory No. 61

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 62

Identify each officer, director, employee or agent of GMAC who participated in or approved any of the formulae described in answer to the preceding interrogatory or the application of any such formulae in establishing the rate of interest to be charged by GMAC to customers obtaining financing for a new-car purchase and with respect to the amount of reserves to be paid to the (a) new-car and (b) used-car automobile dealer, separately stated.

Response to Interrogatory No. 62

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 63

State the interest rate (on a month-to-month basis) charged leasing companies by GMAC for the financing of new cars to be put out on lease by the leasing companies.

Response to Interrogatory No. 63

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 64

Describe in detail how interest rates for financing of new cars to be put out on lease by leasing companies are determined by GMAC, including each of the factors which are involved in the formula.

Response to Interrogatory No. 64

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

Interrogatory No. 65

Identify each officer, director, employee or agent of GMAC who participated in or approved the formula described in answer to the preceding interrogatory or the application of such formula in establishing the rate of interest to be charged by GMAC to leasing companies, and with respect to the amount of reserve to be paid to any automobile dealer or other person (separately stated) with respect thereto.

Response to Interrogatory No. 65

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

Interrogatory No. 66

Describe each way in which the rate for the financing of new-car sales or new-car lease transactions was affected by changes in the prime rate of interest.

Response to Interrogatory No. 66

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 67

Identify and describe each agreement between GMAC and Citibank or any of the Banks or Financial Institutions relating to any losses which may be sustained by Citibank or any of the Banks or Financial Institutions on the financing of new-car sales or leases, or the floor-plan financing of franchised dealers.

Response to Interrogatory No. 67

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

None.

Interrogatory No. 68

Identify and describe all perodic reports on new-car financings or floor-plan financings of franchised dealers or other loans to franchised dealers made by Citibank or any of the Banks to GM or GMAC.

Response to Interrogatory No. 68

In accordance with the General Response, GMAC is willing to provide plaintiffs with answers to this interrogatory:

None.

Interrogatory No. 69

State whether GMAC ever received any oral or written BBB report on Nabcor and if so:

(i) identify who received the report;

(ii) identify the report;

(iii) state whether the report was requested by GMAC;

(iv) identify who sent the report to GMAC;

(v) identify any communications between any officer, director, employee, agent or attorney of GMAC with Louis C. Treise of the New York BBB or Van Miller of the National BBB during 1966-7.

Response to Interrogatory No. 69

See Response to Interrogatory No. 1.

See paragraph 2 of Response to Interrogatory No. 7.

Interrogatory No. 70

Identify all communications between GMAC and the New York BBB, Westchester BBB or National BBB during 1966-7 relating to:

(i) financing, selling, leasing or advertising of new cars or the financing of franchised dealers, leasing companies, or automobile dealers or brokers not franchised by the manufacturer;

(ii) policies, rules or procedures of the BBB;

(iii) meetings of the Board of Directors of any of the BBB's; and

(iv) selection or approval of any officers, directors or employees of any of the BBB's.

Response to Interrogatory No. 70

In accordance with the General Response, GMAC is willing to provide plaintiffs with answers to this interrogatory:

(i) None.

(ii) None.

(iii) None.

(iv) None.

Interrogatory No. 71

Identify and describe all rules, procedures or instructions applicable at any time during 1966 or 1967 relating to the level of compensating balances to be maintained by GMAC with Citibank or any of the Banks.

Response to Interrogatory No. 71

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this Interrogatory are available for inspection by the plaintiffs.

See paragraph 2 of Response to Interrogatory No. 7.

See paragraph 2 of GM Response to Interrogatory No. 22 of interrogatories addressed to GM, Ford, Chrysler and American Motors.

Interrogatory No. 72

Identify each officer, director, employee or agent of GMAC who discussed with Citibank or any of the Banks at any time during 1966 or 1967:

(a) the financing of any (i) franchised dealers; (ii) leasing companies; (iii) other fleet purchasers of new cars; or (v) retail new-car purchasers;

(b) the amount of deposits maintained or to be maintained by GMAC with Citibank or any of the Banks;

(c) the level of compensating balances to be maintained with Citibank or any of the Banks;

(d) the dollar amount of lines of credit established or to be established by GMAC with Citibank or any of the Banks; and

(e) the borrowing by GMAC from Citibank or any of the Banks against lines of credit established with Citibank or any of the Banks.

Response to Interrogatory-No. 72

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to paragraph (a) of this interrogatory: None.

See paragraph 2 of GM Response to Interrogatory No. 22 of interrogatories addressed to GM, Ford, Chrysler and American Motors.

Interrogatory No. 73

Identify each officer, director, employee or agent of GM or GMAC who had the actual or apparent authority to enter into any agreement with Citibank or any of the Banks relating to any of the types of transactions referred to in any of the subparagraphs (a) through (e) in the preceding interrogatory.

Response to Interrogatory No. 73

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

See paragraph 2 of Response to Interrogatory No. 7.

See paragraph 2 of GM Response to Interrogatory No. 22 of interrogatories addressed to GM, Ford, Chrysler and American Motors.

To the extent that this interrogatory calls for the identity of people with "apparent" authority, it is objectionable on the ground of vagueness and on the ground that it calls for a legal conclusion.

Interrogatory No. 74

Identify each officer, director, employee, agent or attorney of GMAC who at any time was a member of the Board of Directors of The Better Business Bureau of Metropolitan New York, Inc. ("New York BBB"), the Better Business Bureau of Westchester County ("Westchester BBB") or the National Better Business Bureau ("National BBB"); or a member of any advisory board of any of these BBB's or was an advisor or consultant to any of these BBB's relating in whole or in part to the financing of franchised automobile dealers or retail purchasers of new automobiles, and as to each such officer, director, employee, agent or attorney:

(i) state the title and function;

(ii) identify the immediate superior of such person at all times, including his title and function with GMAC;

(iii) state the name of the BBB involved;

(iv) state the position or function with the BBB of such officer, director, employee, agent or attorney;

(v) state the date of each appointment or reappointment to the BBB;

(vi) state the date of termination of such person's position with the BBB;

(vii) state the identity of each person who made or approved the nomination or appointment or requested or approved the termination;

(viii) describe any instructions, rules, procedures or suggestions given by GMAC relating to the BBB position (in lieu of any description contained in any documents, defendant may attach a copy of each relevant document); and

(ix) identify each person who prepared, reviewed, approved or issued any such instructions, rules, procedures or suggestions.

Response to Interrogatory No. 74

In accordance with the General Response, GMAC is willing to provide plaintiffs with answers to this interrogatory:

(i) None.

(ii) None.

(iii) None.

Response to Interrogatory No. 74 continued

(iv) None.

(v) None.

(vi) None.

(vii) None.

(viii) None.

(ix) None.

Interrogatory No. 75

Identify each communication by GMAC (including any meetings involving any officers, directors, employees, agents or attorneys of GMAC) concerning the appointment of directors, advisors or consultants to any of the BBB's identified in the preceding interrogatory or policy of any such BBB's relating to the advertising, financing, selling or leasing of new cars by franchised dealers, leasing companies or automobile brokers or dealers not franchised by GM or other manufacturer.

Response to Interrogatory No. 75

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

None.

Interrogatory No. 76

Identify each of the Banks (including Citibank, if appropriate) and subsidiaries and other affiliated companies with whom GMAC had any business dealings at any time during 1966-7, and as to each of such Banks, subsidiaries and affiliated companies:

(i) state on a month-to-month basis the average dollar amount of "deposits" and "compensating balances" (as defined above), separately stated throughout the month maintained by GMAC with each of the Banks, subsidiaries and affiliated companies (separately stated for each);

(ii) identify each account executive or other officer, director, employee or agent of Citibank or any of the Banks who was responsible for each GMAC or GMAC subsidiary or affiliated account having any such deposits (as defined above) which are included in the compensating balances described in answer to the preceding subparagraph; and

(iii) identify the immediate superior at all times for each of the persons identified in answer to the preceding subparagraph and the title and function of such superior.

Response to Interrogatory No. 76

1. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

2. See paragraph 2 of Response to Interrogatory No. 7.

3. This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

4. See paragraph 2 of Response of GM to Interrogatory No. 22 of the interrogatories addressed to GM, Ford, Chrysler and American Motors.

Interrogatory No. 77

Identify the extent to which any of the compensating balances as described in answer to subparagraph "(i)" of the preceding interrogatory were considered by GMAC at any time when determining the rate of interest which GMAC offered to franchised dealers for floor-plan financing or for new-car customer financing, and identify and describe all communications between GMAC and Citibank relating to the compensating balances.

Response to Interrogatory No. 77

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

See paragraph 2 of Response to Interrogatory No. 7.

See paragraph 4 of Response to Interrogatory No. 76.

Interrogatory No. 78

Identify all lines of credit established with Citibank or any of the Banks by GMAC or any GMAC subsidiaries or affiliates, as as to each such line of credit:

(i) state the dollar amount involved in the line of credit and describe all other material terms of the agreement or other arrangement;

(ii) state how much in compensating balances were to be maintained by any person to obtain or maintain the line of credit, or for any amounts actually borrowed pursuant to the line of credit, and describe any other material terms of the agreement or other arrangement;

(iii) describe how much of the line of credit was used by borrowing and the duration of the borrowing, also describe the terms of the borrowing; and

(iv) identify each officer, director, employee or agent of GMAC and Citibank responsible for reviewing, approving or rejecting any grant of a line of credit to GMAC or any subsidiaries or affiliates at any time during 1966-7 and state the identity of his immediate superior at all times.

Response to Interrogatory No. 78

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

See paragraph 2 of Response to Interrogatory No. 7.

This interrogatory is also objectionable because it unnecessarily seeks disclosure of confidential information.

Interrogatory No. 79

Identify and describe all advertising by GMAC during 1966-7 for persons to borrow money from GMAC to finance the retail purchase of new automobiles, and as to each such advertisement state any rate of interest stated in the advertisement.

Response to Interrogatory No. 79

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 80

Identify each officer, director, employee or agent of GMAC responsible during any part of 1966-7 for the payment of reserves or kickbacks to any persons on the financing of:

(a) new cars; and

(b) used cars.

Response to Interrogatory No. 80

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 81

Identify each subsidiary of GMAC and describe the function of each.

Response to Interrogatory No. 81

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 82

Identify each GMAC subsidiary engaging in whole or in part in the financing of automobile dealers, leasing companies or automobile purchasers.

Response to Interrogatory No. 82

In accordance with the General Response and Rule 33(c), Fed. R. Civ. P., documents containing certain of the information called for by this interrogatory are available for inspection by the plaintiffs.

Interrogatory No. 83

Identify the average amount and number of stock, bonds, commercial paper and other securities issued by GM or GMAC or any subsidiaries or other affiliates thereof held by Citibank of any of the Banks in its own name or in any nominee name, which identification is to be by months, breaking down the holdings by issuer and by category of security.

Response to Interrogatory No. 83

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 84

Identify each officer, director, employee or agent of GMAC or any of its subsidiaries or other affiliates who during any part of 1966 or 1967 were officers, directors or employees of Citibank or any of the Banks or Financial Institutions or subsidiaries or affiliates thereof.

Response to Interrogatory No. 84

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

None.

Interrogatory No. 85

Identify each officer, director, employee or agent of Citibank or any of the Banks of any of their subsidiaries or other affiliates who during any part of 1966 or 1967 were officers, directors or employees of GMAC or subsidiaries or affiliates thereof.

Response to Interrogatory No. 85

In accordance with the General Response, GMAC is willing to provide plaintiffs with the answer to this interrogatory:

None.

Interrogatory No. 86

Identify the dollar amount in value and the number or principal amount of each category of security issued by any of the Financial Institutions and owned beneficially or of record by GMAC or any subsidiaries or affiliates at any time during the Time Period.

Response to Interrogatory No. 86

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 87

Identify the dollar amount in value and the number or principal amount of each category of security issued by any of the Newspaper Defendants named in the complaint and owned beneficially or of record by GMAC or any subsidiaries or affiliates at any time during the Time Period.

Response to Interrogatory No. 87

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 88

Identify each person (other than any attorney acting solely in such capacity) who directed or participated in any file search for documents for production in this action.

Response to Interrogatory No. 88

The following GMAC employees participated in the file search for production of documents in this action:

D. T. Poore	GMAC Branch Manager	Bayside, N.Y.
K. D. McCloskey	GMAC Branch Manager	Cincinnati, Ohio
J. W. Ruger	GMAC Branch Manager	Hartsdale, N.Y.
R. M. McCann	GMAC Branch Manager	Kearney, N.J.
A. F. Dodson, Jr.	GMAC Branch Manager	New York, N.Y.
I. H. Jones	GMAC Branch Asst. Mgr.	Oak Park, Ill.
B. T. Kibblehouse	GMAC Branch Manager	Ocean City, N.J.
A. D. Anderson	GMAC Branch Manager	Paterson, N.J.
H. G. Thomas	GMAC Branch Manager	Trenton, N.J.
C. A. Krauss	GMAC Branch Asst. Dir.	GMAC Public Relations
C. D. Platt	GMAC Branch Director	Lease, Fleet and Special Financing (E.O.)
R. W. Carlson	GMAC Branch Reg. Mgr.	Chicago Region
J. F. Musselman	GMAC Branch Reg. Mgr.	N.Y. Region
L. A. Jertson	GMAC Branch Mgr., TEF Credit Group	Detroit, Michigan
R. T. Holzman	GMAC Branch Manager	Philadelphia, Pa.
G. P. Doyle	GMAC Branch Manager	Haddonfield, N.J.

Interrogatory No. 89

Identify each person and document consulted or used in the preparation of the answers to each of the above interrogatories.

Response to Interrogatory No. 89

Following the filing of these answers and objections, GMAC will identify the persons (other than attorneys and paraprofessionals) consulted in the preparation of the answers.

Identification of the documents consulted is objectionable on the ground of undue burden.

Dated: September 18, 1974

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By ______________________
Martin Kleinbard

Attorneys for Defendant
General Motors Acceptance Corporation
345 Park Avenue
New York, New York 10022
(212) 644-8000

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

E.A. FUCILLO, being duly sworn, says:

I am Secretary of General Motors Acceptance Corporation.

I have read the answers to plaintiffs' interrogatories contained in the responses numbered 5, 9 through 12, 18, 19, 31, 32, 45(b), (e), (f), (g), 52, 58, 59, 67, 68, 70, 72(a), 74, 75, 84, 85 and 88 and state that they are true to the best of my information and belief.

E.A. FUCILLO

Sworn to before me this
19th day of September, 1974.

Patricia A Sheridan
Notary Public

PATRICIA A. SHERIDAN
Notary Public, State of New York
No. 41-[illegible]
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March [illegible], 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- : 70 Civ. 5421A (TPG)

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

---------------------------------------x

RESPONSES OF DEFENDANT GENERAL MOTORS CORPORATION TO PLAINTIFFS' INTERROGATORIES TO THE AUTOMOBILE MANUFACTURER DEFENDANTS

Preliminary Statement

These are the responses of defendant General Motors Corporation ("GM") to plaintiffs' interrogatories addressed to the four automobile manufacturer defendants, dated July 19, 1974.*

For the convenience of the Court, we have set out the text of each interrogatory before each answer or objection and have begun each interrogatory on a new page, although that has made this document relatively bulky.

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* GM received seven sets on interrogatories on July 22 and 23, totalling 169 pages and including 552 interrogatories with 1,489 separate questions. Three of these sets were addressed sepcifically to GM or General Motors Acceptance Corp. These totalled 97 pages and included 287 interrogatories with 801 separate questions.

Interrogatory No. 1

Identify and describe all of your communications with Nabcor and any Nabcor franchisees including but not limited to all of your communications between Nabcor or any Nabcor franchisee and each of the persons described below in Interrogatory No. 14.

Response

1. This interrogatory, as well as interrogatories 2 through 11, require GM to identify and describe communications with or about plaintiffs and documents concerning plaintiffs. GM has already answered these interrogatories in substantial part in that it has conducted an extensive file search designed to locate documents relating to Nabcor or any of the plaintiffs and has produced the documents located by that search.* Thus plaintiffs already have written communications with or relating to them.

To the extent that these interrogatories require GM to discover the existence of oral communications and to give written accounts of these communications, they are objectionable for the following reasons:

(a) The document production combined with plaintiffs' own knowledge have enabled plaintiffs to identify over 90 GM employees whom plaintiffs apparently believe may have knowledge or information relevant to this action.** Plaintiffs have stated their intention to take depositions of these employees. (Statement by Plaintiffs Identifying Officials and Employees of Defendants Intended to be Deposed, dated July 25, 1974) Requiring GM to prepare second-hand written summaries of conversations that will doubtless be inquired into during plaintiffs' 90-odd depositions would be unduly burdensome in these circumstances and serve no useful purpose.

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* Other than privileged documents.

** These employees are listed in Interrogatory 14(A).

(b) To the extent that these interrogatories seek information concerning conversations participated in by GM employees whose names do not appear in the documents produced or elsewhere in this litigation, they are objected to on the ground that compliance would be unduly costly and burdensome as GM would be required to undertake considerable efforts to locate any such employees with little or no indication of who they may be. Moreover, there is no reason to believe that such an effort would produce any useful information whatever, inasmuch as neither the plaintiffs nor the documents produced to date have disclosed the identities or existence of any such persons.

2. Interrogatories 1 through 11, 30, 79 through 81, 88, 89 and 91 call for information regarding problems of persons such as non-plaintiff Nabcor franchisees and other automobile brokers, which are not parties in this action. The Court has ruled that this action may not proceed as a class action on behalf of such non-parties. 376 F. Supp. 680. Consistent with that ruling, it already limited document production to documents relating to Nabcor or to one of the plaintiffs. (Minutes, April 29, 1976, at 4-6) The scope of plaintiffs' interrogatories should be similarly limited, as any problems of non-party brokers or dealers are not a part of or relevant to this case.

Interrogatory No. 2

Identify and describe all of your communications concerning Nabcor or any Nabcor franchisee with your Affiliated Finance Company, including all of your communications relating to:

(a) fleet certificate applications;

(b) applications for fleet rebates by your Franchisees;

(c) applications for fleet financings;

(d) resales by Nabcor or any Nabcor franchisee; and

(e) lease or use of fleet automobiles by Nabcor or any Nabcor franchisee.

Response

See ¶¶ 1-2 of Response to Interrogatory No. 1.

Interrogatory No. 3

Identify and describe all of your communications about Habcor or any Habcor franchisee, including all of the communications between you and any of your Franchisees named in the complaint as defendants or co-conspirators, as well as any of the following franchised dealers which are one of your Franchisees:

(a) Colonial Cadillac, of Trenton, N.J.

(b) James M. Sharkey Buick, Inc., of Yonkers, N.Y.

(c) Cunningham Buick, Inc., of Yonkers, N.Y., successor to Sharkey Buick

(d) Herbert Rosenstock, Inc. (Oldsmobile), of New York, N.Y.

(e) Queens City Chevrolet, of Cincinnati, Ohio

(f) Raines Cadillac Co., Inc., of Smithtown, N.Y.

(g) Foy Buick, of Philadelphia, Pa.

(h) Burke Motor Sales (Cadillac), of Wildwood, N.J.

(i) Plachter-Serubo Cadillac, of Philadelphia, Pa.

(j) James Buick, of Ardmore, Pa.

(k) Higgins Oldsmobile-Cadillac, of Doylestown, Pa.

(l) Jerry Biggers (Chevrolet), of Elgin, Ill.

(m) Daniels Cadillac, Inc., of Allentown, Pa.

(n) Northwest Dodge, of Des Plaines, Ill.

Response

1. See ¶¶ 1-2 of Response to Interrogatory No. 1.

2. This Interrogatory as well as interrogatories 4, 6, 9, and 18 through 27 call for the identification of communications between GM and other persons who are not named as defendants or co-conspirators in the complaint (hereinafter "third persons"). Since GM has produced all

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documents relating to plaintiffs and since GM's communications with such third persons cannot be part of the conspiracy alleged in the complaint, these interrogatories are objectionable as they seek information irrelevant and immaterial to any issue in this action. Moreover, insofar as they seek information relating to oral communications, they are unduly burdensome. For example, this interrogatory seeks descriptions of the substance of communications - oral and written - with 73 franchised dealers over a 9 year period.

Interrogatory No. 4

Identify and describe all of your communications concerning Nabcor or any Nabcor franchisee with any automobile dealers association including but not limited to any of the following:

(a) National Automobile Dealers Association ("NADA")

(b) Greater New York, Long Island and Westchester Automobile Dealers Association, Inc.

(c) Buffalo Automobile Dealers Association (now known as defendant Niagara Frontier Automobile Dealers Association

(d) Dayton Area Automobile Dealers Association

(e) New Jersey Automobile Dealers Association

(f) Connecticut Automotive Trades Association, Inc.

(g) Delaware Automobile Dealers Association

(h) Atlanta Automobile Association

(i) the Association of Buick dealers which met in Philadelphia during the 1st week of February, 1970 with one or more Buick representatives present

(j) the group of Buick, Pontiac and Oldsmobile dealers who met in Philadelphia during June-August, 1969 to discuss costs and to agree that each dealer was to charge a minimum markup of $150 per unit for fleet sales to Nabcor of Pontiacs, Buicks and Oldsmobiles.

Response

1. See ¶¶ 1-2 of Response to Interrogatory No. 1

2. With reference to paragraphs (a), (b), (e) and (h), see ¶ 2 of Response to Interrogatory No. 3.

Interrogatory No. 5

Identify each meeting of any automobile dealer associations attended in whole or in part by any of your Personnel at which Nabcor, any Nabcor franchisee or any Independent Dealers were discussed, and identify and describe each such discussion.

Response

1. See ¶ 1 of Response to Interrogatory No. 1.

2. To the extent this interrogatory calls for GM to interrogate all of its employees who might have attended a dealers association meeting at any time since 1965, it is objectionable because compliance would be unduly burdensome and because there is no reason to believe that compliance would produce any useful information. If plaintiffs are aware of any specific dealer association meeting at which any plaintiff was discussed, plaintiffs should be required to identify any GM employees present by interrogating those people from whom they learned of the existence of the meeting and then to make specific inquiries with respect to named GM personnel.

Interrogatory No. 6

Identify and describe all communications about Nabcor, any Nabcor franchisee or any Independent Dealers between you and:

(a) Any of the following newspaper publishing companies:

(i) The Buffalo Courier-Express, Inc., publisher of the Courier-Express;

(ii) New York News, Inc., publishers of the News;

(iii) The New York Times Company, Inc., publisher of The New York Times;

(iv) Newsday, Inc., publisher of Newsday;

(v) Westchester-Rockland Newspapers, Inc., publisher of The Daily Item, The Daily Times, The Standard-Star, The Daily Argus, The Herald Statesman, The Daily News, The Citizen Register, The Reporter Dispatch, The Journal-News, Review-Press & Reporter, and the affiliated newspaper The Evening Star; and

(vi) any other newspaper publishing companies; and

(b) any of the Defendant BBB's or any other Better Business Bureau;

(c) any motor vehicle bureau or department;

(d) any Financial Institutions (as the term is defined in ¶ 13 of the definitional section hereof);

(e) offices of any attorney general, district attorney, police, consumer affairs bureau or other governmental agency; and

(f) any other person.

Response

1. See ¶¶ 1-2 of Response to Interrogatory No. 1

2. With respect to paragraphs (a)(vi), and (b)-(e), see ¶ 2 of Response to Interrogatory No. 3.

Interrogatory No. 7

Identify and describe all communications among any of your Personnel concerning Nabcor or any Nabcor franchisee.

Response

See ¶¶ 1-2 of Response to Interrogatory No. 1.

Interrogatory No. 8

Identify and describe each new automobile order sent to you by any of your Franchisees on behalf of Nabcor or any Nabcor franchisee, and as to each such order:

(a) identify the Franchisee who placed the order with you;

(b) identify the individual who received the order on your behalf and identify the zone, region, district or other office at which the order was received;

(c) state the date of your receipt of the order;

(d) state the make and year of the automobile ordered;

(e) state whether you rejected the order, and if so

  (i) identify the individual who rejected or approved the rejection;

  (ii) state the date of such rejection or approval of rejection; and

  (iii) state the date the rejection was communicated to your Franchisee and identify the individual employed by the Franchisee who received notice of the rejection and identify any of your Personnel who communicated the rejection notice;

(f) state whether you accepted the order, and if so

  (i) identify the individual who approved the order and state the date of the approval;

  (ii) state the date the car was manufactured;

  (iii) state the date the car was released for shipment to your Franchisee;

(g) state whether the order was transmitted to you as a "fleet," "stock" or "retail" order, and whether you changed the status of the order in any way;

(h) identify and describe all communications among Your Personnel concerning the order; and

(i) state whether your Franchisee applied for a fleet rebate with respect to such order and the results of any such application.

Response to Interrogatory No. 8

1. The Court responded to plaintiffs' request for the production of all documents relating to each automobile ordered by Nabcor or any Nabcor franchisee by requiring the automobile manufacturer defendants to ascertain which documents could reasonably be produced. (Minutes, April 24, 1974, at 27.) GM has answered this interrogatory in that it has complied with the Court's April 24, 1974 order concerning the production of documents relating to automobiles ordered by Nabcor.

2. To the extent this interrogatory calls for GM to obtain information which cannot be obtained from the documents which were produced, it is objectionable because it is beyond the scope of the Court's order, because it calls for information irrelevant to any issue in this action, because compliance would be unduly burdensome and because there is no reason to believe that compliance would lead to any useful information.

Interrogatory No. 9

Identify and describe all communications among your Personnel concerning any complaints about Nabcor, any Nabcor franchisee or any Independent Dealer, including any complaints about lost new-car sales, advertising or warranty work.

Response

See ¶¶ 1-2 of Response to Interrogatory No. 1.

Interrogatory No. 10

Identify and describe all agreements or other arrangements between you and any other person concerning indemnification as to any liability in connection with this action, or any payment of legal or other expenses in defending this action.

Response

This interrogatory is objectionable because it calls for information irrelevant and immaterial to any issue in this action.

Interrogatory No. 11

Identify and describe all reports made by you from any of your Franchisees, any automobile dealer association or any other person about any new automobiles sold to Nabcor, any Nabcor franchisee or any Independent Dealers.

Response

1. See ¶¶ 1-2 of Response to Interrogatory No. 1 and ¶ 2 of Response to Interrogatory No. 3.

2. This interrogatory is objectionable for the additional reason that its meaning is not clear as to whether it refers to reports made by GM to other parties or to reports received by GM from other parties.

3. To the extent this interrogatory refers to reports concerning automobiles sold to plaintiffs which reports have nothing to do with plaintiffs, it is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 12

Identify and describe all complaints or criticisms made to you about Nabcor, any Nabcor franchisee, any Independent Dealers or any customers thereof.

Response

1. See ¶¶ 1-2 of Response to Interrogatory No. 1.

2. To the extent this interrogatory calls for questions or criticisms about customers of Nabcor, of any Nabcor franchisee or of any independent dealers, it is objectionable for the additional reason that it calls for information irrelevant to any issue in this action.

Interrogatory No. 13

Identify and describe all statistics supplied by your Personnel to any of your Franchisees, any automobile dealer association or any other person on the dollar amount of advertising placed by any dealer associations or any of your Franchisees in any newspapers, and identify each of your Personnel who supplied the statistics and state the identification of each such communication.

Response

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 14

Identify each of the following persons:

A. (TO BE ANSWERED BY GM ONLY):

1. James M. Roche, Chairman of the Board;
2. Frederik G. Donner, Chairman of the Board;
3. Edward P. Belcher, Staff Assistant, Office of Chairman;
4. the GM officials in Detroit with whom Mr. Belcher had numerous telephone conversations about Nabcor and a fleet certificate for Nabcor during January, 1968;
5. Pete Williamson, Staff Assistant, Office of Chairman;
6. Mr. Drury, GMAC, New York;
7. Mr. K. C. Womack, Buffalo Chevrolet Zone Manager;
8. Mr. English, Buffalo Chevrolet Zone, Assistant Manager;
9. Mr. Lowe, Washington, D.C. Chevrolet Zone Manager;
10. David Spiece, Philadelphia Chevrolet Zone Manager;
11. Jack Douglas, New York Chevrolet Zone Manager;
12. the Buick Zone official in Philadelphia to whom Jack Douglas spoke about Nabcor during 1968;
13. N. M. Karney, New York Regional Director, Fleet Section;
14. the 2 Chevrolet officials or employees in New York, Broadway & 56th St office, to whom N. M. Karney took Frank Maiorana in January, 1967;
15. Robert M. De Simone, Fleet Manager, Philadelphia Zone;
16. Walter Gray, New York Pontiac Fleet Manager;
17. George Ziebout, Foreign Sales Dept., New York;
18. Walter Englert, Fleet Sales, Midtown Chevrolet, New York;

Interrogatory No. 14 (continued)

19. Mr. Englert's superior who spoke with Frank Maiorana by telephone during January, 1967;

20. the Zone Manager, Assistant Zone Manager and District Zone Manager for the area covering Ruckle Pontiac who during October, 1966 met with Frank Maiorana at the bar in the Park Sheraton Hotel at 56th and 7th Avenue, New York;

21. the Pontiac factory official who met with Robert Dillon of Ruckle Pontiac at Dillon's home on a weekend in January, 1967, approximately;

22. the 2 Zone Managers for Oldsmobile and Chevrolet who, on separate occasions during 1968, spoke with Moe Cerota of Cerota Chevrolet-Oldsmobile in Elmer, N.J. about Nabcor;

23. Raymond Kane, GMAC officer in Paterson, N.J.:

24. Hank Thomas, GMAC, Philadelphia;

25. Grover Durham, Buick District Manager in Philadelphia;

26. the Buick representatives at the meeting of the association of Buick dealers in the Philadelphia Zone during the 1st week of February, 1970;

27. Eugene Tanz of Katz (?) & Tanz; a public relations firm representing the Buick Zone at the meeting described in the preceding paragraph;

28. the Zone Manager, Roadman and Fleet Manager and other officials who spoke with Rohrer Chevrolet (in Camden, NJ) about Nabcor at Rohrer's office and elsewhere during September, 1970;

29. the Zone Manager, and Roadman for the Cadillac Zone covering the area including Marty Motors of Yonkers, NY who, during April or May, 1968, spoke with Frank Ripperger and John Montabano about Nabcor;

30. the Pontiac Zone representative for Kollman Pontiac in Hightstown, NJ who during August of 1969 spoke with Mr. Kollman about Nabcor;

31. the Pontiac Zone official for Al Wilson Pontiac, located in Hatboro, Pa., who on February 22, 1968 spoke with Mr. Wilson about Nabcor;

Interrogatory No. 14 (continued)

32. R. D. Coulter, Manager, Organization & Analysis Department, Pontiac, Michigan;

33. John H. Harwood, National Customer Relations Manager of Pontiac;

34. Mr. B. R. Everett, Pontiac Tax & Insurance Department, Pontiac, Michigan;

35. Vincent A. McCabe, Zone Manager;

36. R. W. Redmond, Buffalo Zone, Zone Service and Parts Manager;

37. C. D. Clar, Pontiac Buffalo Zone, Customer Relations Manager;

38. P. H. Harrington, Pontiac Office, Manager & Car Distribution;

39. John Rock, Director, Fleet & Government Sales Section;

40. Mr. Owens, referred to in letter to N. M. Karney dated 3/29/66;

41. R. M. O'Connor of GM;

42. P. J. Wetzel of GM Public Relations Staff, NY;

43. R. L. Berg, Director, Fleet & Government Sales Section;

44. Chuck Church, Oldsmobile Division, Lansing, Michigan;

45. the Regional Manager who brought Nabcor to the attention of Mr. Church, as stated in 12/14/66(?) memo of a telephone conversation with Mr. Church;

46. James B. Buckland, Office Manager and Products Distributor, Pontiac, Bala Cynwyd;

47. W. J. Brooks, Jr., Pontiac, Michigan, Fleet Sales, Administrative Assistant;

48. Walter Johnson, Pontiac;

49. G. P. Prodromos, Pontiac Fleet Manager, Philadelphia Zone;

50. Carl E. Michael, Pontiac Eastern Region;

51. G. B. Hogan, Pontiac Fleet Sales Dept.;

52. Mr. J. F. Ware, Philadelphia Zone Manager, Pontiac;

Interrogatory No. 14 (continued)

53. Mr. L. J. Dupree, Pontiac, Michigan;

54. Mr. Jack E. Simmers, Philadelphia Zone, Office Manager and Car Distributor;

55. Don Miller, Pontiac Zone;

56. W. Johnson, Fleet Dept.;

57. Mr. Gerald J. Burt, Pontiac Philadelphia Zone;

58. J. W. Johnston, Fleet, Pontiac;

59. Mr. L. W. Miller, Accounts Receivable (Pontiac);

60. Richard K. Moberg, Customer Relations Manager, Buick Motor Division, Fort Washington, Pa.;

61. L. D. Robbins, Buick, Flint, Manager; Owner Relations;

62. Richard K. Mobey, Buick Owner Relations Manager;

63. R. W. Jeffers, Buick;

64. James Kurzen, Customer Relations Manager, Pontiac, Philadelphia office;

65. Willis E. Hames, Pontiac, Michigan, Assistant General Service Manager;

66. Mr. J. S. Walker, Pontiac, Michigan;

67. R. M. O'Connor;

68. R. E. Bradley, Dayton, Ohio, Assistant Branch Manager, GMAC;

69. G. F. Kerr, Director, Special Financing, Executive Office;

70. A. K. Pringle, Regional Manager;

71. R. R. Dykstra, Manager, Dayton;

72. R. R. Nelson;

73. S. E. Johnson, Vice President;

74. F. Connolly, Assistant Branch Manager, Philadelphia Branch;

75. D. L. Dooley, Executive Office, Leases, Fleet & Specialist Financing;

76. J. Higgins;

77. V. Jertson, Detroit TEF;

Interrogatory No. 14 (continued)

78. Mr. C. McCrary, Manager, Chevrolet Sales Finance;

79. Mr. G. P. Davey, Jr., Manager, Detroit TEF;

80. Mr. J. C. Thedes, GMC legal staff;

81. Mr. E. J. Smith;

82. Mr. W. K. Laughlin, Buick Motor Division;

83. D. E. Nelson, Assistant Finance Manager and Vice President, Executive Office;

84. G. E. Geier, Oldsmobile Division;

85. Mr. A. J. Felton, Vice President;

86. Mr. T. P. Wallace, Resident Comptroller, Flint, Michigan;

87. T. L. Swope, Zone Organization Manager, Buffalo;

88. Mr. Dunham, GM Fleet;

89. R. Lee Courthey, Assistant Manager, Fleet Sales Dept.;

90. J. J. Musselman, Jr., Philadelphia Chevrolet;

91. F. V. Blesse, Detroit TEF;

92. H. L. Busch, Divisional Comptroller;

93. W. Kuck, General Supervisor Accounts Receivable;

94. Mr. W. H. Gordon, Jr., Philadelphia Cadillac Zone, Manager;

95. Hubert B. Dupuis, Zone Produce Distributor, Philadelphia Cadillac Zone;

96. Albert E. Collier, National Distribution Manager for Cadillac;

97. George Frank.

Response

GM will respond to this interrogatory.

Interrogatory No. 15

With respect to each grand jury or other investigation concerning Habcor, any Habcor franchisees, any Independent Dealers or your fleet program in which you participated by subpoena or otherwise:

(a) identify the investigation;

(b) identify each person who was subpoenaed to testify or actually testified and state the approximate duration of his or her testimony;

(c) identify and describe any meetings at which such person discussed any matters in anticipation of his or her testimony;

(d) identify and describe any meetings at which such person discussed his or her participation in the investigation or the investigation itself, describing in detail each of the communications which took place at any such meetings;

(e) identify each document which refers to the investigation or any of the testimony which was given during the investigation; and

(f) identify each document produced by you to each grand jury or other investigating body or official.

Response

1. See ¶¶ 1-2 of Response to Interrogatory No. 1.

2. This interrogatory is objectionable because it calls for the disclosure of privileged communications and because it is an attempt to circumvent this Court's ruling of April 29, 1974, which denied plaintiffs' request for production of documents containing notes or summaries of the testimony of witnesses before grand juries. (Minutes, at 56-57)

3. This interrogatory is objectionable on grounds of vagueness in that the subject matter of grand jury or other investigations by public agencies is rarely a matter

Response to Interrogatory No. 15 (continued)

of public record. Even if GM had appeared before a grand jury, the interrogatory calls for it to speculate as to whether the subject of the investigation concerned the plaintiffs.

4. Paragraph (f) of this interrogatory is objectionable on the ground that GM has already produced any documents relating to the plaintiffs. Accordingly, the identification of additional documents relating to persons other than the plaintiffs would serve no useful purposes, as they are irrelevent to the subject matter of this action.

Interrogatory No. 16

Identify any secretary and assistant and the immediate superior at all times during the Time Period of each of the persons identified in answer to Interrogatory (A-D) No. 14 above.

Response

1. This interrogatory is objectionable because it is unduly broad and because compliance with it as presently drafted would be unnecessarily burdensome and oppressive.

2. In light of the fact that Interrogatory No. 14 requests that GM identify more than 96 people and the fact that the time period for these interrogatories is almost ten years, this interrogatory requires GM to identify several hundred people. It is doubtful whether the identification of these people could lead to relevant information. If plaintiffs identify a specific person for whom this information is requested, identify a specific relevant time period, and demonstrate that the identification called for could lead to relevant information, GM would comply with such a request.

Interrogatory No. 17

As to each of your Franchisees named in the complaint as a defendant or co-conspirator, identify each of the following:

(a) The owner, partner or any holder of 10% or more of any class of securities of the Franchisee (indicating the percentage of ownership);

(b) President, vice president, secretary, treasurer or other officer;

(c) Member or chairman of the board of directors;

(d) General manager;

(e) Sales manager;

(f) Fleet manager;

(g) Service manager;

(h) Parts manager; and

(i) Used-car manager.

In lieu of providing this information, defendant may make available the records of each of the Franchisees for inspection and copying by plaintiffs.

Response

1. This interrogatory is objectionable since it calls for information irrelevant to any of the issues in this action.

2. Assuming this interrogatory called for relevant information, it also would be objectionable in that it calls for business information, some of which (paragraph [a]) may be confidential, concerning companies which are independent of GM.

3. Assuming this interrogatory called for relevant information, the proper parties to which it should be addressed are the individual GM dealers, many of which are parties to this action. Indeed, Interrogatory No. 25 of plaintiffs' interrogatories addressed to each of the defendant franchised dealers seeks precisely this information from the dealers.

Interrogatory No. 18

Identify and describe all rules, procedures or instructions applicable at any time during 1966 or 1967 relating to the level of compensating balances (as defined in ¶ 19 of the definitional section hereof) to be maintained by you or your Affiliated Finance Company with Citibank or any of the other Banks.

Response

1. This interrogatory, as well as interrogatories 19-27, request information concerning financial or other relationships between and among GM, GMAC, First National City Bank and - since "Banks" is a defined term in this interrogatory - a total of 22 other financial institutions.

These interrogatories are all objectionable because they call for information which is irrelevant and immaterial to any issue in this action and which cannot lead to relevant information. The only counts of the complaint with which these interrogatories could possibly be connected are the Sherman Act conspiracy counts. GM and GMAC have already turned over to plaintiffs their documents relating to plaintiffs, including any communications with First National City and other financial institutions. Hence, there is no need for further inquiry. Morever, the existence of financial relationships among GM, GMAC and various financial institutions is not probative of whether there has been a conspiracy with respect to the plaintiffs.

The Court has previously rejected plaintiffs' broad requests addressed to First National City for discovery with respect to the bank's relationships with automobile manufacturers and dealers and the profitability to First National City of the various types of transactions. Discovery was limited to the production of documents concerning Nabcor and the taking of depositions of those named First National City people who had some contact with Nabcor or some communications concerning Nabcor. (Minutes, July 12, 1974, at 51; April 29, 1974, at 38-41; April 12, 1974, at 26) Accordingly, discovery requests to GM concerning GM's relationships with banks and other financial institutions should be limited to those contacts or communications which relate to plaintiffs. GM has already produced documents relating to plaintiffs. (See ¶ 1 of Response to Interrogatory No. 1.)

These interrogatories are also objectionable because they unnecessarily seek information of a confidential nature.

2. See ¶ 2 of Response to Interrogatory No. 3.

3. See ¶ 2 of Response to Interrogatory No. 22, infra.

Interrogatory No. 19

Identify each of your Personnel or the Personnel of your Affiliated Finance Company who discussed with Citibank or any of the other Banks at any time during 1966 or 1967:

(a) the financing of any (i) franchised dealers; (ii) leasing companies; (iii) other fleet purchasers of new cars; or (iv) retail new-car purchasers;

(b) the amount of deposits maintained or to be maintained by you or your Affiliated Finance Company with Citibank or any of the other Banks;

(c) the level of compensating balances to be maintained with Citibank or any of the other Banks;

(d) the dollar amount of lines of credit established or to be established by you or your Affiliated Finance Company with Citibank or any of the other Banks; and

(e) the borrowing by you or your Affiliated Finance Company from Citibank or any of the other Banks against lines of credit established with Citibank or any of the other Banks.

Response

See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

Interrogatory No. 20

Identify each of your personnel and each of the personnel of your Affiliated Finance Company who had the actual or apparent authority to enter into any agreement with Citibank or any of the other Banks relating to any of the types of transactions referred to in any of the subparagraphs (a) through (e) in the preceding interrogatory.

Response

1. See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

2. To the extent that this interrogatory calls for the identification of people with "apparent" authority it is also objectionable on the ground of vagueness and on the ground that it calls for a legal conclusion.

Interrogatory No. 21

Identify each of the Banks (including Citibank, if appropriate) and subsidiaries and other affiliated companies with whom you or your Affiliated Finance Company had any business dealings at any time during 1966-7, and as to each of such Banks, subsidiaries and affiliated companies:

(i) state on a month-to-month basis the average dollar amount of "deposits" and "compensating balances" (as defined above), separately stated, throughout the month maintained by you or your Affiliated Finance Company with each of the Banks, subsidiaries and affiliated companies (separately stated for each);

(ii) identify each account executive, loan officer or any of the Personnel of Citibank or any of the other Banks who was responsible for each account of yours or your Affiliated Finance Company or subsidiary or affiliate having any such deposits (as defined above) which are included in the compensating balances described in answer to the preceding subparagraph; and

(iii) identify the immediate superior at all times for each of the persons identified in answer to the preceding subparagraph and the title and function of such superior.

Response

See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

Interrogatory No. 22

Identify the extent to which any of the compensating balances as described in answer to subparagraph "(1)" of the preceding interrogatory was considered by you or your Affiliated Finance Company at any time when determining the rate of interest which your Affiliated Finance Company offered to your Franchisees for floor plan financing or for new-car customer financing, and identify and describe all communications between you and your Affiliated Finance Company relating to the compensating balances.

Response

1. See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

2. This interrogatory is objectionable on the additional ground of vagueness, as "compensating balance" is a defined term in these interrogatories and the definition is so ambiguous as to make responding to this interrogatory extraordinarily difficult:

> "Compensating balance" includes what is considered by you or any of the Banks to be a compensating balance as well as any deposit with any of the Banks or any subsidiary or affiliate thereof in which a gross profit is accrued by any of the Banks or any subsidiary or affiliate thereof and credited to some other transaction between any of such Banks (or subsidiary or affiliate thereof) and the owner or beneficiary of the deposit, but excludes any deposit with any of the Banks (or subsidiary or affiliate thereof) which by its own terms is the whole transaction with such Bank (or subsidiary or affiliate thereof) and therefore has no connection with any other transaction between such Bank and the owner or beneficiary of the deposit."

Interrogatory No. 23

Identify all lines of credit established with Citibank or any of the other Banks by you or your Affiliated Finance Company or subsidiaries or affiliates, and as to each such line of credit:

(i) state the dollar amount involved in the line of credit and describe all other material terms of the agreement or other arrangement;

(ii) state how much in compensating balances were to be maintained by any person to obtain or maintain the line of credit, or for any amounts actually borrowed pursuant to the line of credit, and describe any other material terms of the agreement or other arrangement;

(iii) describe how much of the line of credit was used by borrowing and the duration of the borrowing, also describe the terms of the borrowing; and

(iv) identify each of your Personnel and the Personnel of your Affiliated Finance Company and Citibank responsible for reviewing, approving or rejecting any line of credit to you, your Affiliated Finance Company or any subsidiaries or affiliates at any time during 1966-7 and state the identity of his immediate superior at all times.

Response

1. See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

2. See ¶ 2 of Response to Interrogatory No. 22.

Interrogatory No. 24

Identify the average amount and number of units of stock, bonds, commercial paper and other securities issued by you or your Affiliated Finance Company or any subsidiaries or other affiliates thereof held by Citibank or any of the other Banks in its own name or in any nominee name, which identification is to be by months, breaking down the holdings by issuer and by category of security.

Response

See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

Interrogatory No. 25

Identify each of your Personnel and any Personnel of your Affiliated Finance Company or any subsidiaries or affiliates who during any part of 1966 or 1967 were officers, directors or employees of Citibank or any of the other Banks or Financial Institutions or subsidiaries or affiliates thereof.

Response

See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

Interrogatory No. 26

Identify each of the Personnel of Citibank or any of the other Banks or any of their subsidiaries or other affiliates who during any part of 1966 or 1967 were officers, directors or employees of yours or of your Affiliated Finance Company or subsidiaries or affiliates thereof.

Response

See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

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Interrogatory No. 27

State the value in dollar amount and the number of units or principal amount of each category of security issued by any of the Financial Institutions and owned beneficially or of record by you or your Affiliated Finance Company or any subsidiaries or other affiliates at any time during the Time Period.

Response

See ¶ 1 of Response to Interrogatory No. 18 and ¶ 2 of Response to Interrogatory No. 3.

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Interrogatory No. 28

State the value in dollar amount and the number of units or principal amount of each category of security issued by any of the newspaper defendants named in the complaint and owned beneficially or of record by you or your Affiliated Finance or any subsidiaries or other affiliates at any time during the Time Period.

Response

This interrogatory is objectionable because it calls for information irrelevant and immaterial to any issue in this action. The only counts of the complaint with which this interrogatory could possibly be connected are the Sherman Act conspiracy counts. But whether GM owned securities issued by the newspaper defendants is not probative of whether there has been a conspiracy with respect to plaintiffs.

Interrogatory No. 29

Identify and describe any parts of your destination charge which does not represent the actual cost of transportation for the car involved:

(a) as to parts transported to the assembly plants; or

(b) as to transportation of the assumbled automobile to the place of business of your Franchisee.

Response

1. This interrogatory, as well as interrogatories 30 through 32 and 35 through 52, deals with the issue of destination charges. GM is in the process of answering these interrogatories in that it is complying with the Court's July 12, 1974 order concerning the production of documents relating to destination charges. The Court responded to plaintiffs' demand for the production of documents relating to destination charges by requiring the automobile manufacturer defendants to produce policy documents outlining the reasons for the present destination charge system, documents outlining the reasons for the most recent change which created the present system, and documents showing the manner in which the destination charge is calculated. (Minutes, July 12, 1974, at 20, 21, 40, 41.) It is expected that these documents will be produced by September 30. This will constitute sufficient response to these interrogatories in accordance with Rule 33(c), Fed. R. Civ. P. To the extent that these interrogatories seek information beyond that specified by the Court, they are objectionable in that they call for information irrelevant and immaterial to any issue in this action.

2. In particular, the Court has limited the destination charge counts to the "transshipment" theory -- the claim that GM, Ford, Chrysler and American Motors conspired to adopt

a destination charge system the effect of which was to prevent Nabcor from transshipping automobiles. Since the claim has been so limited and the overchage -- "phantom freight" theory dismissed the existence of "phantom freight" is no longer relevant to this action.

Interrogatory No. 30

State whether your destination charge is (i) optional or (ii) mandatory for any class of

(a) franchised dealers;

(b) fleet purchasers;

(c) United States Government purchasers;

(d) retail purchasers;

(e) Independent Dealers; and

(f) Nabcor or any Nabcor franchisees.

Response

1. See paragraph 1 of Response to interrogatory No. 29 and paragraph 2 of Response to interrogatory No. 1.

2. This interrogatory is objectionable on the ground of vagueness as to the meaning of the term "fleet purchasers". "Fleet" is a term which has a variety of divergent meanings as it has been used thus far in this litigation. For example, the qualifications necessary to obtain a GM fleet user certificate are not the same as those necessary to make one eligible as a qualified fleet purchaser under the GM fleet plans that were in effect during the period 1966-70. In addition, Frank Maiorana, president of Nabcor, has used the phrase in still another sense. (Maiorana deposition 62-64) Thus, it is essential that references to "fleets" be precise in order that GM can fairly respond to the interrogatories and that the record in this action be unambiguous.

Interrogatory No. 31

Identify and describe your formula or method for calculating destination charges, and state

(a) whether you made any gross profits on any category of charge (identifying any overhead items);

(b) whether you incurred any gross loss on any category of charge (identifying any overhead items);

(c) whether you made any profits or losses on the aggregate of your destination charges during any part of the Time Period (identifying any overhead items).

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. Paragraphs (a) through (c) are objectionable on the ground that they seek information that is irrelevant to any issue in this action.

Interrogatory No. 32

State when the present formula or method of calculating destination charges was adopted by you, and state the date on which (i) any or (ii) all destination charges became mandatory.

Response

See paragraph 1 of Response to Interrogatory No. 29.

Interrogatory No. 33

Identify and describe all grand-jury or other investigations or any governmental or private actions or proceedings which were instituted against you relating to destination charges or phantom freight and the results of each.

Response

1. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action, as plaintiffs' destination charge claim has been limited to the so-called transshipment theory. See paragraph 2 to Response to Interrogatory No. 29.

2. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "other investigations".

3. This interrogatory is also objectionable to the extent it calls for the identification of privileged documents.

Interrogatory No. 34

Identify each person during the Time Period who participated in development or testing of the formula or reviewed or approved your formula for calculation of destination charges.

Response

GM will identify to the extent possible those who have had responsibility for determining and computing destination charges during the Time Period.

Interrogatory No. 35

Identify and describe all competitive factors taken into account in the formula regarding:

(a) any of your Franchisees competing in the sale of the same make of cars;

(b) any of your Franchisees selling different makes of cars in competition with each other;

(c) any of the franchisees of the other Defendant Automobile Manufacturers competing with any of your Franchisees; or

(d) any of the other Defendant Automobile Manufacturers.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that the subject matter is inappropriate for inquiry by interrogatory. Persons participating in decisions relating to destination charges may well have considered widely varying factors which can best be inquired into, if relevant, at depositions of such persons.

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Interrogatory No. 36

Describe in detail any extent to which your destination charge formula is based on one or more basing points.

Response

See paragraph 1 of Response to Interrogatory No. 29.

Interrogatory No. 37

Describe in detail each of the bases for your 1974 increase in destination charges, and state whether the destination charges were increased for cars which are shipped without use of all of the types of transportation for which the destination charges were increased, and state whether the destination charges were increased uniformly for all automobiles or any other basis for allocation of the increase in transportation costs to you.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is also objectionable because it calls for information irrelevant to any issue in this action. Plaintiffs have been out of the automobile business since early 1973. Accordingly, information concerning 1974 increases in destination charges is immaterial.

Interrogatory No. 38

Identify each of your assembly plants in the United States and Canada from which new cars have been shipped to any of your domestic Franchisees; and

(a) state the number of cars of each type made at the plant;

(b) identify each zone, district or region to which the cars were shipped;

(c) state the number of cars shipped to each such zone;

(d) identify each assembly plant located closer to your Franchisee making the same type of car, and describe in detail why cars made at such closer plant were not shipped to your Franchisee in lieu of the cars actually shipped.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action. In particular, paragraph (d) of this Interrogatory, as well as several others, infra, seem to be directed to determining whether GM used the cheapest available method for getting automobiles from the points of assembly to the dealer. That question has nothing to do with any of the allegations of the complaint.

Interrogatory No. 39

State in detail your reasons for abandoning, during the late 1950's, your shipment of new automobiles by boat over the Great Lakes during the summer months and

(a) identify the cost per car when shipping by boat;

(b) identify the cost per car when shipping by other means when the boat transportation was not available because of the season or otherwise;

(c) identify the cost per car for the new means of transportation used by you immediately after any such abandonment of water transportation;

(d) state whether destination charges for the same type of car varied during the year depending on whether boat transportation was used;

(e) identify the total transportation cost of shipping new automobiles from each point to point using any transportation by boat; and

(f) identify the new transportation cost for each of the point-to-point shipments described in answer to the preceding subparagraph immediately after you abandoned the water transportation.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 40

Identify any interest you may have in Leaseway Transportation Corp., Anchor Motor Freight, Nu-Car Carriers, Inc., or M&G Motor Convoy, Inc. or any of the railroad cars or other means of transportation used by you to ship assembled automobiles.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable because it calls for information irrelevant and immaterial to any issue in this action.

Interrogatory No. 41

Identify and describe all destination charges made by you for actual transportation or transportation costs in excess of the most direct or least expensive route from your assembly plant to the place of business of your Franchisee.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable because it calls for information irrelevant and immaterial to any issue in this action.

Interrogatory No. 42

Identify and describe in detail all instances where you do not attempt to minimize the destination charges for any categories of shipping, and give each of your reasons therefor.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable because it calls for information irrelevant and immaterial to any issue in this action.

Interrogatory No. 43

State whether your destination charges to a given Franchisee are identical for two cars with identical specifications shipped to the Franchisee on the same day

(a) from two different assembly plants; or

(b) using two different types of transportation or routes.

Explain your answer in detail.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable because it calls for information irrelevant and immaterial to any issue in this action.

Interrogatory No. 44

Identify each of your programs, if any, for obtaining competitive bids from competing carriers of new automobiles.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 45

Identify which of your new-car shipments are subject to rates established by a tariff approved by a regulatory agency, and describe the extent to which the rates established by tariff are used in your formula for calculation of destination charges.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it is overbroad and calls for information irrelevant to any issue in this action.

Interrogatory No. 46

Identify each of your Personnel who participated in the preparation, analysis, review or approval of any tariff or proposed tariff relating to the shipment of new automobiles or shipment of parts to assembly plants.

Response

1. See paragraph 1 to Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it is overbroad and calls for information irrelevant and immaterial to any issue in this action.

3. This interrogatory is objectionable on the ground that communication with public agencies is privileged under the First Amendment. *See Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965); *Semke* v. *Enid Automobile Dealers Assn.*, 456 F.2d 1361 (10th Cir. 1972).

Interrogatory No. 47

Identify and describe all instances in which a train route selected or used by you to transport new cars bypasses a car-carrier terminal at a rail depot located closer to your purchasing Franchisee than the rail depot actually used as the drop off point, and state each of your reasons for any such instances and the dollar amount of difference in destination charges involved with respect to each instance on a per unit basis.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 43

State each of your reasons for continuing to ship new cars to any of your Franchisees from an assembly plant located further away from the Franchisee than another assembly plant which at the same time is making the same type of car.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 49

State each of your reasons for not allowing any of your franchisees to avoid payment of the destination charge by picking up his car at your assembly plant.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action for the following reasons, among others:

(a) Plaintiffs are not franchised dealers and, since the class action motion was denied, do not have standing to raise claims which might be raised by GM franchisees.

(b) The only claim concerning destination charges which remains in this action is the transshipment claim. National Auto Brokers Corp. v. General Motors Corp., 376 F. Supp. 620, 632 (S.D.N.Y. 1974). The information here requested has nothing to do with the transshipment claim.

Interrogatory No. 50

Identify and describe all documents which compare actual car transportation costs with the costs you charge as a destination charge (after deducting your charges relating to the transportation of parts into the assembly plant).

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it is overbroad and calls for information irrelevant to any issue in this action.

Interrogatory No. 51

State each of your reasons for including in your destination charge your pre-assembly transportation costs together with your costs of transporting the assembled automobile, and identify each person who participated in or approved the decision to combine these pre-assembled and post-assembly transportation costs into a single destination charge.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. See Response to Interrogatory No. 34.

Interrogatory No. 52

State the extent to which your destination charge for any cars included an amount for transportation of the assembled car in excess of the rate actually provided in the tariff of the transportation company used by you to transport the car, and state in each way the tariffs applicable to a specific shipper are used in the calculation of the destination charge actually used for such shipment.

Response

1. See paragraph 1 of Response to Interrogatory No. 29.

2. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 53

Identify and describe in detail each of your fleet programs in effect for each make of car at any time during the Time Period.

Response

This interrogatory, as well as interrogatories 54 through 67, 96 and 97, requests information concerning GM's fleet program. On July 12, 1974, the Court responded to plaintiffs' demand for the production of numerous documents concerning fleet programs by requiring the automobile manufacturer defendants to produce documents describing their fleet programs and to produce those documents which refer to plaintiffs. (Minutes, July 12, 1974, at 33-34.) GM has already produced the documents which refer to plaintiffs, as well as many documents relating to fleet plans and fleet user certificates. GM will comply fully with the Court's order. This will constitute a sufficient response to these interrogatories in accordance with Rule 33(c), Fed. R. Civ. P. To the extent that these interrogatories seek information beyond that specified by the Court, they are objectionable in that they call for information irrelevant and immaterial to any issue in this action.

Interrogatory No. 54

State which fleet programs, if any, Habcor as a purchaser for resale could have qualified for as a fleet purchaser, and identify the applicable period for each such program so identified.

Response

See Response to Interrogatory No. 53.

Interrogatory No. 55

Identify and describe all benefits to be derived by a fleet purchaser under each of your programs; including:

(i) any scheduling priority of the building of ordered automobiles;

(ii) financing by an Affiliated Finance Company or other person;

(iii) financing or insurance reserve payments;

(iv) purchasing of new parts at a discount;

(v) warranty work programs or payments; and

(vi) guaranty of car values or resale values or repurchase programs.

Response

1. See Response to Interrogatory No. 53.

2. Paragraphs (i) through (v) are objectionable on the ground that they call for information irrelevant to any issue in this action. In particular, the Court has dismissed any claims based on a failure to provide Nabcor with a warranty program (Minutes, July 12, 1974, at 10-11) and plaintiffs have themselves conceded that their claim of discrimination relating to financing relates only to franchised dealers (Minutes, April 19, 1974, at 39-40).

Interrogatory No. 56

Identify the amount of rebates paid on every make of car under each of your fleet programs, and state whether the rebate was paid

(a) directly to the fleet purchaser; or

(b) directly to your Franchisees, in which case state whether you or your Franchisee determined whether the Franchisee would make any payments to the fleet purchaser.

Response

See Response to Interrogatory No. 53.

Interrogatory No. 57

State each instance in which you rejected any fleet orders or advised your dealers to reject a fleet order until the customer applied for or received a fleet certificate, fleet number or other fleet approval.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

3. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "fleet order". See paragraph 2 of Response to Interrogatory No. 30.

Interrogatory No. 58

Identify and describe each time you approved fleet sales to any customer before fleet status had been approved by you or your Affiliated Finance Company.

Response

1. See Response to Interrogatory No. 53.

2. This Interrogatory is objectionable because it is overbroad, because it calls for information irrelevant to any issue in this action, and because it is vague.

3. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the terms "fleet sales" and "fleet status". See paragraph 2 of Response to Interrogatory No. 30.

Interrogatory No. 59

Describe how it would be possible under any of your fleet programs for a person going into the leasing or daily rental business to acquire on a fleet basis in competition with other leasing or daily rental companies the number of cars required by you for him to qualify as a fleet purchaser.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "fleet basis". See paragraph 2 of Response to Interrogatory No. 30.

Interrogatory No. 66

Identify each investigation by you of any sales of new cars by qualified fleet purchasers, and as to each such investigation:

(a) identify and describe the results of each such investigation;

(b) state the number of new cars sold by the fleet purchasers;

(c) describe any action taken by you; and

(d) state whether the purchaser's fleet status was withdrawn or suspended.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 61

Identify each person who lost his fleet status with you for failing to adhere to any of your fleet requirements, identifying each of the requirements which were not met.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is objectionable because it is overbroad and because it calls for information irrelevant to [illegible] issue in this action.

3. The interrogatory is objectionable on grounds of vagueness as to the terms "fleet status" and "fleet requirements". See paragraph 2 of Response to Interrogatory No. 30.

Interrogatory No. 62

Identify and describe each instance in which you denied an application for a fleet certificate, fleet number or status as a qualified fleet purchaser, explaining each of your reasons for such denial.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is objectionable because it is overbroad and because it calls for information irrelevant to any issue in this action.

Interrogatory No. 62

Identify and describe each aspect of your fleet program and describe the relationship which your fleet certificate or fleet number has to your fleet program, and identify each person who has derived any benefits from any of your fleet programs who was not qualified under your program to receive a fleet number, certificate or status.

Response

1. The request contained in the first clause of this interrogatory has been answered by the documents produced by GM concerning fleet programs. See Response to Interrogatory No. 53.

2. The request contained in the second clause of this interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 64

Identify and describe all your rules, policies and procedures for giving any priority on production dates for any category of order, Franchisee or car purchaser.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 65

Describe in detail how a qualified fleet purchaser can obtain a priority in production date, and stateeach of your reasons for permitting this priority.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 66

Identify the maximum length of backlog or waiting time experienced by each of your assembly plants for each relevant category of order (in absence of strikes or acts of God) during each month of the Time Period, and state the average production wait or backlog for your Franchisees on (i) fleet orders; (ii) retail orders; and (iii) stock orders and for your United States Government purchasers.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 67

Identify and describe all instances in which any of your Franchisees named as a defendant or co-conspirator were unable to obtain all the cars ordered by them on (i) a retail, (ii) stock, or (iii) fleet basis, and as to each such instance:

(a) give each of your reasons therefor;

(b) state whether the Franchisee had ordered in excess of his monthly, annual or other sales objective or quota;

(c) state what percentage of cars he sold outside of his territory; and

(d) identify and describe all communications between you and the Franchisee concerning your failure to supply all of the cars ordered by the Franchisee.

Response

1. See Response to Interrogatory No. 53.

2. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

3. This interrogatory is objectionable on the ground of vagueness as to the meaning of the term "fleet basis". See paragraph 2 of Response to Interrogatory No. 30.

Interrogatory No. 68

Describe how the advertising contribution or charge appearing on your invoices (the "Advertising Contribution") is assessed and collected, including any participation by you or any dealers or dealer associations, and identify and describe all documents relating to the Advertising Contribution.

Response

This interrogatory, as well as interrogatories 69 through 73, 91, and 93 through 95, call for information concerning advertising contributions. GM is providing plaintiffs with copies of field management guides for the dealer advertising associations of GM's automobile divisions. These guides contain full descriptions of the nature of and GM's connection with these associations and give plaintiffs the information needed for this litigation. Production of these documents constitutes sufficient response to these interrogatories in accordance with Rule 33(c), Fed. R. Civ. P. To the extent that these interrogatories seek information not contained in said documents, they are objectionable because they seek information that is irrelevant and immaterial to any issue in this action.

Interrogatory No. 69

State whether you required any of your Franchisees to be a member of any dealer association at any time during the Time Period, and if so, identify which dealer associations to which your Franchisees were required to become a member.

Response

See Response to Interrogatory No. 68.

Interrogatory No. 70

State whether the Advertising Contribution is required to be collected from your Franchisees:

(a) by you; or

(b) as a condition to membership in any of the dealer associations described in answer to the preceding interrogatory or any other dealer associations.

Response

See Response to Interrogatory No. 68.

Interrogatory No. 71

State the amount of the Advertising Contribution for each type of new car manufactured by you at any time during the Time Period, and identify and describe how the amount is determined for any make of car or for any category of Franchisees.

Response

1. GM has already produced all factory invoices on Nabcor automobiles which could be located. These invoices show the amount of advertising contributions involved to the extent any contribution was involved.

2. The manner in which the advertising contribution amounts are determined is described in the documents being produced to plaintiffs. See Response to Interrogatory No. 68.

3. To the extent this interrogatory calls for additional information, it is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 72

Identify under what circumstances any of your Franchisees had the right to withdraw from or veto any proposed expenditures of any pooled Advertising Contributions (including contributions attributable to the Franchisee) by any dealer association of which any of your Franchisees was a member.

Response

See Response to Interrogatory No. 68.

Interrogatory No. 73

State whether leasing companies or any other fleet purchasers were required to pay the Advertising Contribution at any time during the Time Period; and if so, state whether they were able to obtain a refund or rebate of the contribution from you or your Franchisee. Explain your answer in detail.

Response

See Response to Interrogatory No. 68.

Interrogatory No. 74

Identify and describe each of your warranty agreements and warranty programs in effect at any time during the Time Period with respect to each of your makes, and identify each of your Personnel who participated in or approved any form of warranty agreement or warranty program.

Response

GM will respond to this interrogatory by making available to plaintiffs documents describing the nature of its new automobile warranties during the relevant period. Any further information called for is objectionable on the ground that it is irrelevant to any issue in this action.

Interrogatory No. 75

Explain in detail each of your reasons for:

(a) imposing a radius within which a new-car customer was required to return to your selling Franchisee for warranty work, and state when your policy was first adopted and state the identity of each person who participated in or approved the decision;

(b) imposing a fee for the transfer of a warranty from the original purchaser (as defined by you) to the subsequent purchaser (also as defined by you), and identify each of your Personnel who participated in or approved the decision;

(c) requiring a warranty plate or card to be made in the name of the first purchaser (as defined by you) and identify each of your Personnel who participated in or approved the decision; and

(d) denying warranty coverage to a purchaser from Nabcor, a Nabcor franchisee or an Independent Dealer for a length of time equal to the period the car was in the possession of Nabcor, the Nabcor franchisee or the Independent Dealer: and identify each of your Personnel who participated in or approved the decision.

Response

1. This interrogatory is objectionable because it calls for information that is irrelevant to any issue in this action.

2. With reference to paragraph (d), see ¶ 2 of Response to Interrogatory No. 1.

Interrogatory No. 75*

Identify and describe all of your rules, regulations and procedures relating to any action taken by you upon your receipt of any complaint by new-car purchasers about the failure of any of your Franchisees to perform warranty work on the car.

Response

1. This interrogatory is objectionable because it calls for information that is irrelevant to any issue in this action.

2. See ¶ 2 of Response to Interrogatory No. 1 and ¶ 2 of Response to Interrogatory No. 3.

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* This is the second Interrogatory No. 75.

Interrogatory No. 76

Identify and describe each of your programs for ensuring that your Franchisees fulfill your obligations under any of your warranties.

Response

This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 77

Describe each period under each of your forms of warranty when it was not a violation of your Franchisee's sales agreement with you to refuse to perform warranty work on a car he did not sell.

Response

See Response to Interrogatory No. 74.

Interrogatory No. 78

Identify and describe all advertising prepared, approved or run by you in which all or any part of any of your warranty programs was described and identify each advertisement in which it was stated in substance that a new-car purchaser had to return to your selling Franchisee under to obtain any or all types of warranty work.

Response

This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 79

Identify each complaint by customers of Nabcor, any Nabcor franchisee or any Independent Dealer about their failure to obtain warranty work; and

(a) state what action you took about the complaint;

(b) identify your Franchisee who sold the car;

(c) identify your Franchisee who refused the warranty work;

(d) identify any of your Franchisees who finally provided the requested warranty work; and

(e) identify and describe all related communications between you and your Franchisees.

Response

See ¶ 2 of Response to Interrogatory No. 1.

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Interrogatory No. 80

Identify all non-franchised dealers who during the any part of the Time Period were performing warranty work for compensation under contract with you or where you made direct payments, and

(a) identify and describe all agreements with any leasing companies or other fleet purchasers (including Hertz and Avis) which were allowed by you to perform their own warranty work for compensation; and

(b) state each of your reasons for permitting non-franchised dealers to perform warranty work.

Response

1. This interrogatory, as well as interrogatories 81 through 84, 87 through 91, and 98, request information concerning GM's warranty programs, much of it directed to plaintiffs' claim that Nabcor was wrongfully prevented from doing repair work on behalf of GM and being compensated therefor by GM. These interrogatories are all objectionable because they call for information irrelevant and immaterial to any issues in this action. At the July 12, 1974 conference, the Court ruled that any claims relating to the alleged refusal of the manufacturers to permit plaintiffs to do repair work under factory warranty programs were dismissed. It noted that all that remains of plaintiffs' warranty claims is the claim that Nabcor's customers were denied warranty work to which they were entitled pursuant to an alleged boycott. Moreover, in reliance on those rulings, the Court denied discovery concerning warranty work in general and ruled that the only documents relevant to plaintiffs' warranty claim are those which specifically refer to Nabcor or any of the plaintiffs. Indeed, plaintiffs' attorney has acknowledged that given the

limited scope of the remaining warranty claim, the only relevant documents are documents which specifically refer to plaintiffs. (Minutes, July 12, 1974, at 10-15.) Since GM has already complied with the discovery direction relating to warranty programs, GM has completely fulfilled its discovery obligations with respect to warranty programs and any further discovery would be irrelevant and unduly burdensome.

2. See paragraph 2 of Response to Interrogatory No. 1.

Interrogatory No. 81

Identify and describe all documents referring to performance of any warranty work by non-franchised dealers on a job basis for any of your Franchisees, or the quality of any such performance.

Response

See Response to Interrogatory No. 80.

Interrogatory No. 82

Identify and describe your hourly shop rate by make of car during all parts of the Time Period for each area of the country which has a differentrate, and explain all reasons for any differences in rates and how the rates were determined.

Response

1. This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

2. See ¶ 1 of Response to Interrogatory No. 80.

Interrogatory No. 83

State each qualification you required the mechanics of any of your Franchisees to have to perform warranty work.

Response

See ¶ 1 of Response to Interrogatory No. 80.

Interrogatory No. 84

State whether you have a policy of permitting your Franchisees to put their get-ready mechanics on warranty work.

Response

See ¶ 1 of Response to Interrogatory No. 80.

Interrogatory No. 85

Identify and describe all investigations by you of any of the defendant Franchisees relating to their claims for warranty payments, and

(a) state the dates and results of any such investigations; and

(b) identify each of your Personnel who authorized, approved or reviewed the investigation or results thereof.

Response

This interrogatory is objectionable on the ground that it calls for information irrelevant to any issue in this action.

Interrogatory No. 56

Identify and describe each actual or threatened termination, non-renewal or cancellation of the franchise or sales agreement of any of your Franchisees named in the complaint as a defendant or co-conspirator for any reasons including but not limited to alleged warranty abuse.

Response

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 87

Describe in detail your average warranty experience for each area of the country in which you have a different shop labor rate.

Response

1. See ¶ 1 of Response to Interrogatory No. 80.

2. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "average warranty experience".

Interrogatory No. 88

Identify all proposals made to you by any person for the establishment of warranty programs by independent garages or dealers and the results of each proposal, and Identify each of your Personnel who reviewed, approved or rejected the proposed program.

Response

See Response to Interrogatory No. 80.

Interrogatory No. 89

State the circumstances if any under which you make any of your technical publications (including recent updates or revisions by bulletin or otherwise) about your automobiles available to any category of repair facility other than your Franchisees.

Response

See Response to Interrogatory No. 80.

Interrogatory No. 90

Identify and describe any statistics you have on the quality of repair work performed by

(i) your Franchisees; or

(ii) any other category of repair facility in comparison with local Franchisees.

Response

See ¶ 1 of Response to Interrogatory No. 80.

Interrogatory No. 91

Identify each person who had the responsibility for:

(a) ensuring compliance with the injunction or rules of law established in the decision in U. S. v. General Motors Corporation, 384 U.S. 127, 86 S. Ct. 1321 (1966) and identify his immediate superior at all times;

(b) dealing with evaluation of the performance by your Franchisees under the sales or franchise agreement with you; and identify his immediate superior at all times;

(c) managing any programs designed in whole or in part to assist your Franchisees in maximizing sales within their area of responsibility;

(d) ensuring compliance with your drop-shipping policy relating to the shipping of new automobiles from one area to another, and identify his immediate superior at all times;

(e) determine or administer your policies of giving refunds of excise taxes with respect to sales made for exportation;

(f) following or preparing reports on the growth of (a) automobile leasing; (b) Independent Dealers; (c) independent service centers; or (d) insurance programs for warranty work; and

(g) supervising or performing lobbying activities of any kind which would affect Nabcor, any Independent Dealers, leasing companies, insurance programs for warranty work; dealer licensing laws, and identify each of your Personnel who participated in or approved any of these lobbying activities.

Response

1. Each paragraph of this interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

2. Paragraph 2(a) is objectionable in that it is beyond the scope of the Court's order limiting discovery on the subject of GM's compliance with the decision in United States v. General Motors Corp. to documents specifically referring to one of the plaintiffs. In response to plaintiffs' request for the production of documents concerning compliance with United States v. General Motors Corp., documents produced by GM in that litigation and subpoenas and notices to produce received by GM

Response to Interrogatory No. 91 continued

in that litigation, the Court stated:

> "I am not going to require all the documents with respect to compliance with that decision in 1966. If such documents exist of a nonprivileged, producible nature *and they refer to one of the plaintiffs*, they will get produced under the Rule.
>
> "That is the end of that." (Minutes, April 29, 1974, at 57) (emphasis supplied)

3. With respect to paragraphs (b) and (c), see General Response No. 9.

4. Paragraph (d) is irrelevant to the issues in this action in light of the testimony of Anthony Maiorana that GM never refused to drop ship for Nabcor. (A. Maiorana dep., March 27, 1973, at 403)

5. With respect to paragraphs (f) and (g) see General Response No. 2.

6. With respect to paragraph (g) see General Response No. 4.

7. With respect to paragraph (g), see ¶ 2 of Response to Interrogatory No. 1. In addition, this paragraph is objectionable on the ground that lobbying activities are privileged under the First Amendment. See Response to Interrogatory No. 46.

Interrogatory No. 92

Identify and describe each meeting with one or more members of the New York State Legislature or any other state legislature or Unites States Senator or Representative at which any discussion occurred concerning laws or proposed or suggested laws which would regulate or outlaw automobile brokers in New York State, any other state or on a national basis.

Response

This interrogatory is objectionable on the ground that any meetings such as those inquired about are privileged under the First Amendment. See Response to Interrogatory No. 46.

Interrogatory No. 93

Identify and describe your policy about permitting or encouraging your Franchisees to advertise or solicit outside of their area of responsibility, and

(a) describe all areas in which you allow Franchisees to advertise new cars;

(b) explain how any sale of a new car on a retail basis could work to the dealer's disadvantage in your formula for evaluation of his franchise, (i) when the Franchisee is able to obtain any number of cars he wants; (ii) when the Franchisee is unable to obtain the number of cars he needs to meet his sales objective in his own area;

(c) describe the extent to which your Franchisees are permitted to sell cars on a fleet basis or retail basis for delivery into another area, and describe any conditions on delivery;

(d) identify and describe each way in which a car sold or delivered to a person living outside of your Franchisee's area could adversely affect your Franchisee's performance rating (i) if he sold the car or (ii) if another Franchisee inside or outside of the area sold the car to a person within the area of the first Franchisee;

(e) state each instance in which your Franchisees were unable to obtain enough cars from you to fulfill their obligations within their own.

Response

1. This interrogatory, as well as Interrogatories 94-95, deal with plaintiffs' recent assertion that GM restricts the territories in which its dealers may sell. At the July 12, 1974 conference, the Court indicated that it was unaware of any allegation in the complaint concerning territorial restraints and that discovery would be denied unless plaintiffs can show that their claims concerning territorial restraints are within the complaint. (Minutes, July 12, 1974,

at 14-15) Plaintiffs cannot make such a showing since there are no such allegations in the complaint.* Accordingly, these interrogatories are objectionable because they call for information irrelevant to any issue in this action and because they are beyond the scope of the Court's order.

2. This interrogatory is objectionable on the ground of vagueness as to the meaning of the term "fleet basis". See ¶ 2 of Response to Interrogatory No. 30.

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* Paragraph 109 of the complaint does not embody any such claim. In its entirety, paragraph 109 reads: "In light of these apparent difficulties for many franchised dealers, the unlawful conspiracy or combination developed, the plaintiffs allege, to assist the franchise dealer in preserving the territorial exclusive of his franchise." This merely refers to the fact that GM seeks to locate its dealers so as to give each a sufficient sales potential for a reasonable profit opportunity; thus, dealers are not crowded together in areas insufficient to support them, and in that limited sense, each has a "territorial exclusive". It does not embody a claim that GM restricts the geographical area within which a dealer may sell.

Interrogatory No. 94

Identify and describe in detail all programs or policies which are considered by you to provide some direct or or indirect territorial protection for any of your Franchisees, and identify all documents which refer to any type of territorial protection.

Response

See ¶ 1 of Response to Interrogatory No. 93.

Interrogatory No. 95

Identify and describe in detail your rules, policies and procedures at any time during the Time Period for the evaluation of your Franchisees' performance under their sales or franchise agreement with you (hereinafter "Evaluation Programs"), and as to each of the Evaluation Programs:

(a) identify each instance in which any of your Franchisees has not been able to obtain during any of the years of the Time Period a number of cars in excess of the number of cars needed by him to fulfill his area responsibility;

(b) identify and describe the meaning of the term "planning potential" and describe how this is used to determine the number of cars a dealer is expected to sell or is expected to be allocated by you;

(c) identify each of your Franchisees who was cancelled for reasons including insufficient sales in his area of responsibility and in each case state the total number of sales made by the Franchisee:

(i) inside his territory; and

(ii) outside of his territory;

(d) identify and describe all ways in which your Franchisees can fail to obtain all cars needed by them by some form of allocation or limitation of supply; and

(e) identify and describe all ways in which your Franchisees can be required by you to take more cars than they need, and all action taken by you for failure to accept the unwanted cars.

Response

1. Each of the paragraphs of this interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

2. Paragraph (a) is also objectionable on grounds of vagueness.

Response to Interrogatory No. 94 continued

3. With respect to paragraphs (b) and (c), see ¶ 1 of Response to Interrogatory No. 93.

4. Without waiving its objection as to relevance, GM will define the term "planning potential", referred to in paragraph (b).

Interrogatory No. 96

State in detail each of the reasons you gave your Franchisees for them to enter into the fleet sales business, including any information on:

(a) the average dollar amount of gross profits which the Franchisee could expect from each unit of a fleet sale (one automobile equalling one unit);

(b) whether fleet sales were supposed to be in addition to the retail sales the Franchisee was already making;

(c) whether fleet sales by the Franchisee would be taking away retail sales from the Franchisee or some other Franchisee;

(d) any comparison of gross or net profits between fleet and retail sales;

(e) the dollar amount and breakdown of any additional overhead the Franchisee would have to incur to go into the fleet business; and

(f) who would provide warranty work or other service for fleet sales to (i) persons in the Franchisee's area; and (ii) persons outside of this area.

Response

1. This interrogatory is objectionable because it is overbroad and because there is no reason to believe that compliance would lead to any useful or relevant information.

2. This interrogatory, as well as interrogatories 54 through 67, 96 and 97, requests information concerning GM's fleet program. On July 12, 1974, the Court responded to plaintiffs' demand for the production of numerous documents concerning fleet programs by requiring the automobile manufacturer defendants to produce documents describing their fleet programs and to produce those documents which refer to plaintiffs. (Minutes, July 12, 1974, at 33-34.) GM has already produced the

documents which refer to plaintiffs, as well as many documents relating to fleet plans and fleet user certificates. GM will comply fully with the Court's order. This will constitute a sufficient response to these interrogatories in accordance with Rule 33(c), Fed. R. Civ. P. To the extent that these interrogatories seek information beyond that specified by the Court, they are objectionable in that they call for information irrelevant and immaterial to any issue in this action.

3. This interrogatory is objectionable on the ground of vagueness as to the meaning of the term "fleet sales".

Interrogatory No. 97

State the average amount of your Franchisees' gross profit per unit sold as a fleet on a national basis for each make of car during each year of the Time Period.

Response

1. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

2. This interrogatory, as well as interrogatories 54 through 67, 96 and 97, requests information concerning GM's fleet program. On July 12, 1974, the Court responded to plaintiff's demand for the production of numerous documents concerning fleet programs by requiring the automobile manufacturer defendants to produce documents describing their fleet programs and to produce those documents which refer to plaintiffs. (Minutes, July 12, 1974, at 33-34.) GM has already produced the documents which refer to plaintiffs, as well as many documents relating to fleet plans and fleet user certificates. GM will comply fully with the Court's order. This will constitute a sufficient response to these interrogatories in accordance with Rule 33(c), Fed. R. Civ. P. To the extent that these interrogatories seek information beyond that specified by the Court, they are objectionable in that they call for information irrelevant and immaterial to any issue in this action.

3. This interrogatory is also objectionable to the extent it unnecessarily seeks to compel GM to disclose confidential information.

Interrogatory No. 98

Describe the average profitability of your Franchisees by make and year including a breakdown of their gross profits into the following categories:

(a) new-car sales;

(b) new-car leases;

(c) repair (non-warranty);

(d) warranty work;

(e) financing reserves;

(f) insurance reserves;

(g) parts; and

(h) used-car sales.

Response

1. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

2. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "profitability of your Franchisees by make and year".

3. With respect to paragraph (d), see ¶ 1 of Response to Interrogatory No. 80.

4. This interrogatory is also objectionable to the extent it unnecessarily seeks to compel GM to disclose confidential information.

Interrogatory No. 99

Describe by make and year the average cost to your Franchisees of each new car sold by them (i) at retail or (ii) on a fleet basis; and state the average gross profit for each make and each category of your Franchisees.

Response

1. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

2. This interrogatory is also objectionable to the extent it unnecessarily seeks to compel GM to disclose confidential information.

3. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "cost", "fleet basis", and "average gross profit".

Interrogatory No. 120

Describe the average net profits by make and category of your Franchisee during each year of the Time Period, and state what return is made by your Franchisees on their invested capital.

Response

1. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

2. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "average net profits".

3. This interrogatory is also objectionable to the extent it unnecessarily seeks to compel GM to disclose confidential information.

Interrogatory No. 161

Describe your gross and net profits and net sales on each of your makes of automobile and the amount of capital invested for each make of automobile, as to

(a) equity capital; and

(b) indebtedness.

Response

1. This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

2. This interrogatory is also objectionable on the ground of vagueness as to the meaning of the words "gross and net profits".

3. This interrogatory is also objectionable to the extent it unnecessarily seeks to compel GM to disclose confidential information.

Interrogatory No. 102

Identify and describe all documents relating to the competitive factors existing between the sale and leasing of the same or different makes of automobiles, and any studies which have been made comparing the markets for the sale and the lease of new automobiles.

Response

GM will endeavor to locate such documents as may exist.

Interrogatory No. 103

Identify and describe all communications and documents relating to your transactions with AMC, Franchisees of AMC or customers of AMC Franchisees in any of the following areas:

(a) providing of capital, floor-plan financing or customer financing;

(b) providing transportation facilities;

(c) providing any parts or assembled units;

(d) providing technology such as (i) emission technology and (ii) safety standard devices; and

(e) providing legal or other services.

Response

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 164

Identify the destination charges and base price (before accessories) for all of your makes to all of your Franchisees in the New York marketing area and in the Philadelphia marketing area.

Response

1. GM will respond to the extent of furnishing destination charges to New York and Philadelphia.

2. To the extent this interrogatory calls for information concerning the base price of automobiles it is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 105

With respect to any of the transactions between you and AMC, state which if any of the business dealings are made available on an equal basis to any other automobile manufacturer or automobile marketer or would be made available to a company trying to break into the business of manufacturing or distributing new cars in the United States, and indicate where information on any such availability has ever been made public before.

Response

This interrogatory is objectionable because it calls for information irrelevant to any issue in this action.

Interrogatory No. 106

Identify each of your Personnel who at any time was a member of the Board of Directors or any advisory boards of or was an adviser or consultant to, any of the Defendant BBB's relating in whole or in part to the advertising, financing, servicing, leasing or selling of new automobiles to the public and as to each of such Personnel:

(i) state his title and function with you;

(ii) identify his immediate superior at all times; including his superiors; title and function with you;

(iii) state the name of the Defendant BBB involved;

(iv) state the position or function with the Defendant BBB of any such Personnel;

(v) state the date of each appointment or reappointment to the BBB;

(vi) state the date of termination of such person's position with the BBB;

(vii) state the identity of each person who made or approved the nomination or appointment or requested or approved any termination;

(viii) describe any instructions, rules, procedures or suggestions given by you relating to the position or function with the Defendant BBB; and

(ix) identify each person who prepared, reviewed, approved or issued any such instructions, rules, procedures or suggestions.

Response

This interrogatory is objectionable because compliance would be unnecessarily burdensome. Plaintiffs here ask for GM to interrogate thousands of its employees to determine whether any have been associated with one of the four defendant Better Business Bureaus (BBB's) at any time over the past 9-1/2 years. The most efficient method of getting the information here sought would be for plaintiffs to request that the defendant BBB's identify any GM people who may have been associated with those BBB's. Indeed, plaintiffs' July 19, 1974

Response to Interrogatory No. 106 continued

interrogatories addressed to the four defendant BBB's request the identification of the business affiliations of all BBB officers and directors (No. 25) and request an identification of all automobile dealer employees or agents who were on a BBB board of directors or any advisory board or who were BBB advisers or consultants (No. 39).

Interrogatory No. 107

Identify each person (other than any attorney acting solely in such capacity) who directed or participated in any file search for documents for production in this action.

Response.

1. GM will identify those persons with supervisory authority over the file search for documents produced in this action.

2. To the extent this interrogatory calls for the identification of all people who may have consulted any file with respect to this search, it is objectionable because it is unduly broad and because compliance would be an unnecessary burden. If, with respect to a given document or a given file, plaintiffs can show that there is a legitimate reason for identifying each person who may have been involved in the search, GM is willing to undertake the task of complying with that limited request.

Interrogatory No. 198

Identify each person and document consulted or used in the preparation of the answers to any of the above interrogatories.

Response

1. GM will identify those persons, other than counsel and those working under counsel's immediate supervision, who have provided information used in answering these interrogatories.

2. To the extent this interrogatory calls for the identification of every person who may have been contacted with respect to these interrogatories, it is objectionable because it calls for information irrelevant to any issue in this action.

3. To the extent this interrogatory requests that GM identify documents consulted in responding to information used to answer these interrogatories, it is objectionable as it calls for information irrelevant to any issue in this action.

Dated: September 18, 1974

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By s/
Martin Kleinbard

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MR. ROSDEITCHER: Your Honor, there are two other items which are really identical, Counts 17 and 24, which we discussed in the past. I will act at your Honor's convenience if you think it is too late.

THE COURT: What is 17 about?

MR. ROSDEITCHER: Count 17 and also Count 24 relate to a claim that GM discriminates in favor of fleets vis-a-vis NABCOR, or in favor of leasing companies, to be more specific,vis-a-vis NABCOR, and specifically that there is a price allowance or alleged rebate paid over by GM to the leasing companies, and that this constitutes a price discrimination against NABCOR.

THE COURT: I tell you what. I hate to have everybody coming back. Maybe there is some way to simplify the attendance at these meetings. Everybody is welcome to attend, but I don't think we can go any farther tonight. I have a sentence to complete, and I think the reporter obviously has probably reached the end of his rope. So we have to just refer other matters to other conferences.

MR. KLEINBARD: May I just, your Honor, hand up our responses to interrogatories that the respondent has served on GM and GMAC?

THE COURT: I am receiving some affidavits; right?

MR. ROSDEITCHER: That is correct, your Honor.

THE COURT: And then what else?

MR. KLEINBARD: I am giving you the responses of General Motors, GMAC, and Midtown Chevrolet to the interrogatories that were posed, answers and objections both, your Honor.

THE COURT: These have been served?

MR. KLEINBARD: These have been served, yes.

THE COURT: All right.

MR. KLEINBARD: The only reason I am giving them to you now, your Honor, is that they are so lengthy that I think that unless we have some initial indication from the Court as to how to proceed at a subsequent hearing, this is just going to go on and on.

THE COURT: Just going back to Count 14 business, I am going to receive affidavits from Ford, AMC, and Chrysler?

MR. NORFOLK: Yes, sir.

MR. HERBST: Yes, your Honor.

MR. HOLMAN: Yes, sir.

THE COURT: Make it as brief as you can. I think it is probably not too hard. When will those be in?

MR. NORFOLK: In your discretion.

THE COURT: In a week.

What problems do we have as far as discovery is

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concerned?

MR. KLEINBARD: All I am suggesting, sir, is that there were 92 pages of questions and 287 interrogatories and 861 separate questions posed to us. And that is only three out of the seven sets. And I am only speaking of those for the clients that I represent. I am just suggesting to the Court, in the interests of saving the Court's time, that if perhaps the Court could review these in advance, rather than to discuss them one by one, I just cannot conceive of our going on and discussing them one by one without taking endless amounts of time.

We have responded to each and every one. They are all printed separately. It would be very helpful, I think, if we had that form of disposition with respect to these very lengthy documents.

THE COURT: I was looking at something else. Are there certain of the interrogatories you are objecting to?

MR. KLEINBARD: That is correct, your Honor.

MR. PERSON: Most of them, your Honor. They have not answered but a couple.

MR. KLEINBARD: That is not true. That is not true. We have answered a very substantial amount with respect to GMAC, and we have indicated that we are on or before September 30 responding to a number on behalf of GM and

Midtown Chevrolet.

THE COURT: I would assume that the issues sort of break down in a group?

MR. KLEINBARD: They do, your Honor. And I think they are handled this way, by us at least. Your Honor gave us certain guidelines as a result of some earlier pretrial conferences, namely, that on such matters as fleets and other matters,that we should supply--the transshipment, destination charges, and so forth--that we should supply policy documents. And we have supplied those policy documents. We are not going beyond that. I think when your Honor reads these interrogatories you will see that they go way beyond that. We are not answering with respect to people who have been dismissed, such as non-named plaintiffs, other independent brokers, etc. We think we have complied and that our objections are sound.

All I am saying is that,unless there is some disposition by the Court, if we are going to proceed in the manner which we have proceeded heretofore at these pretrial conferences, this being but three of seven sets that were served, I just can't imagine how we can handle it as a mechanical matter. We think we have thoroughly complied and that our objections are sound.

If for any reason our objections are not sound, then we would like to have a ruling.

THE COURT: Under the rules what is Mr. Person's obligation now?

MR. KLEINBARD: He should move to have us further answer.

THE COURT: If he disagrees with your objections.

MR. KLEINBARD: That is right. He should move after he has received our documents on the 30th, plus our answer.

MR. PERSON: Your Honor, I would like to so move, since we are doing things so informally here.

THE COURT: Have you seen what you are so moving to?

MR. PERSON: I have, your Honor. I received two sets of it, and I see that in most cases the answers are not there, but my questions are stated and there is a bulk that is really no more than my questions; very little in the form of answers.

Could we refer this to a master? Would that save your time to be able to do that?

THE COURT: No. Absolutely not.

MR. KLEINBARD: In addition, your Honor, he has not seen what we are going to produce on September 30. I don't know how he can answer.

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THE COURT: I know you said that, and I know it is so late I am probably not listening. You are talking about several sets. I don't know what you mean.

MR.KLEINBARD: The plaintiff served seven sets of interrogatories.

THE COURT: On whom?

MR. KLEINBARD: Three of them -- I, of course, can only speak for GM, GMAC, and Midtown Chevrolet.

THE COURT: But the Better Business Bureau, I think the newspapers, and the financial institutions --

THE COURT: In other words, seven sets of interrogatories?

MR. KLEINBARD: On seven sets of defendants.

THE COURT: Seven sets of defendants.

MR. KLEINBARD: That's right. And they total some staggering number.

THE COURT: So if we get answers, we will get answers from all the defendants --

MR. KLEINBARD: I don't know what the others are going to do.

THE COURT: Depending on which set was addressed to them, they will answer that set.

MR. KLEINBARD: That is right. That is right, your Honor. And in some cases questions have been asked of us which have also been asked of other defendants and, in our judgment, more properly asked.

THE COURT: I think it is probably a mistake not to screen those interrogatories in advance.

MR. KLEINBARD: That is all I am suggesting, your Honor.

THE COURT: I mean we should have had a screening session. Because I have gotten a letter from some Pontiac dealers up in Buffalo and they have these vast interrogatories, and you know --

MR. PERSON: Your Honor, that letter was pure fraud.

THE COURT: Pure fraud.

MR. PERSON: Absolutely. That letter referred to some kind of a failure to allow a person in the chamber of commerce up in Yonkers when they deliberately omitted the seven or eight lines preceding that which said that we were dealing with Ruckle Pontiac, and Ruckle Pontiac refused any further to give us cars. The letter quite pointedly omitted that. So it was intended, I think, to deceive you.

THE COURT: I think we have got a big problem in handling these interrogatories now.

MR. KLEINBARD: Well, your Honor --

THE COURT: I am just saying in retrospect I wish

I had seen them in advance and made the same kind of a screening that I attempted to do on the depositions; no matter how imperfect it would be better than having had a voluminous interrogatory submitted to every single defendant now in the case, which I really regret. I am afraid that we have got a lot of defendants grappling with a lot of-interrogatories that they should not even be worried with.

Did you serve on every defendant in this case a voluminous set of interrogatories?

MR. PERSON: I don't call them voluminous. I did serve seven interrogatories.

THE COURT: Half inch or what?

MR. KLEINBARD: Ours are 92 pages, your Honor.

THE COURT: Really that should never have been permitted.

MR. KLEINBARD: In any event, your Honor, I am in the position of a pregnant woman slightly after her ninth month. I have done the work. I would like to deliver these, and if the plaintiff is not satisfied with them, he can move after he gets my material on September 30. This has cost us any amount of time and effort and money, your Honor.

THE COURT: What additional money is it?

MR. KLEINBARD: We have said, that is our under-

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standing with Mr. Person, we have some documents we just could not get on time from our clients, we will get on or before September 30 some other policy documents we could not collect in time. I just want to give you these answers and responses and let Mr. Person move against them. I just cannot see taking the Court's time to discuss these one by one.

MR. PERSON: Your Honor, Mr. Kleinbard served on plaintiffs a document of equal proportions.

THE COURT: Just put them in.

MR. KLEINBARD: I appreciate that.

THE COURT: Mr. Person, who else has answered these?

MR. NEVILLE: Buffalo Courier served answers and objections, your Honor.

THE COURT: I guess I have gotten your materials.

I think you had better write me a summary, Mr. Person, a little memo. And write me where you stand as far as dates. I know there must be a lot of stipulations extending time; right?

MR. PERSON: Should I attach copies of them?

THE COURT: I want to know where you stand as far as your interrogatories are concerned.

MR. PERSON: My interrogatories are served, and I have each of the answers right here. These are the answers from about ten defendants, your Honor. So far, most are

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objections, not answers.

THE COURT: If you do this, in the first part of the week, a memorandum. Just, if you would, pull the thing together for me. Indicate who you have served interrogatories on. Indicate who has answered, filing the document consisting of answers and objections, and the dates when the others are due, so I can get a picture of where we stand on the interrogatories.

As far as the parties who have answered and objected, I suppose you, in addressing interrogatories, if somebody has objected, move to have that interrogatory answered. Obviously I would be happy if you would consider any that you could withdraw, but let us assume that you are going to persist on most of them. I think it probably would be a good idea to just have another meeting and start in with the GM situation first, if I get a memo. I just think I have to go through it. I don't see any other thing to do. If I get a memo from Mr. Person and responsive memos from you describing why you should answer or should not answer those interrogatories, you just have a lot of memos.

MR. KLEINBARD: I am perfectly willing to rest, your Honor, on what I have submitted and the responses, and if your Honor would go so far as to read those, I think it is so obvious --

THE COURT: You have explained the grounds for your objections?

MR. KLEINBARD: I have explained the grounds for my objections. I think some of them are obviously so objectionable on their face and go so far beyond where your Honor indicated --

THE COURT: You indicated the grounds for objection?

MR. KLEINBARD: On each one, your Honor. And I have no intention of burdening you with any further memos. But on the other hand I think to stay here and discuss each one, where we have 330-some-odd to discuss for us alone, will delay the trial of this case by several years, and I just don't see any point to that.

THE COURT: All right. I will go over the objections as stated by Mr. Kleinbard. I will then have a hearing at which you can respond. I don't want any memo in response. You can present your arguments orally. We will leave it that way. I will do the same thing on any other interrogatories and objections filed up to the present time. That is about all I can do. We just have to get to it.

MR. BOYLE: Your Honor, excuse me, there is one point that I would like to bring up that cannot really wait because it pertains to the forthcoming depositions of General Motors. My name is Edward Boyle, Shearman & Sterling, NABCOR and First National City Bank, so that Mr. Person cannot say that there are any open matters which must be resolved before I make my application.

THE COURT: It is up to Mr. Person. If he wants rulings, to get your witnesses to answer items which you have objected to, it is up to him to apply. If he does not apply, I am not going to invite that.

MR. PERSON: The purpose of our --

THE COURT: If he does not apply, then he has waived it.

MR. BOYLE: Your Honor, he also served me with interrogatories and request for the production of documents which duplicated prior interrogatories which you told me I did not have to respond to, on July 12. I told him that when he brought up his discovery matters from the depositions, I wish to make a formal application to be relieved of any burden of responding to the second set of interrogatories and also to the request for the production of documents.

So on my part I need some relief from the Court at least.

MR. PERSON: Your Honor, the problem is that Mr. Boyle kept directing his witness not to answer various questions on the grounds of irrelevance. If the witness had answered the questions, there would not be any problem.

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THE COURT: Of course that is always the case. Mr. Person, I tell you, your discovery and your theories are so extravagant. You know, this case is just so difficult to control, and we have got these voluminous interrogatories.

I will say this, and I hope that the lawyers follow this: These interrogatories were served, as I understand it, after the meeting we had in late July sometime, and there wasn't time to hear a lot of objections before I went away. I think this was maybe on the telephone from my clerk, but it was the best I could do. I did ask that the parties answer the interrogatories to the extent they could, but they would certainly be free to make any and all objections this fall.

I assume that has been done, so that the objections are being made.

What about this thing with First National City Bank?

MR. PERSON: I thought that we would be covering this tonight, but I see that because of the time problem we probably cannot; but I would like to make this motion to compel them to answer various questions and to produce various documents.

THE COURT: You told me that there was a set of interrogatories that duplicates something I already ruled on.

MR. BOYLE: No, your Honor.

THE COURT: Then I think, pending a further review of First National City Bank's situation and particularly a review of these interrogatories in general, I am going to direct that you do not have to answer. And I am going to further direct -- and I want you to give notice to every defendant who has not thus far answered the interrogatories -- that they are not required to answer any of these interrogatories until I have reviewed them, which I will attempt to do initially with the GM interrogatories, and I am sure that many dozens of the questions are carried over in all seven sets. There is no use to have these people, all the defendants, struggling with these things, when we may end up cutting large chunks out.

So I want you to give notice, Mr. Person, immediately to every defendant who has not thus far filed their answers and objections that their requirements for answering or objecting are held in abeyance until further notice from the Court.

MR. BOYLE: Thank you, your Honor.

THE COURT: I suppose we could try to set a date.

I don't have my appointment book. I just will have to notify everybody of the new date when we can go with these interrogatories. Thanks a lot.

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sideration, not to be bound by it, but maybe we could have a trial strictly on the liability from the boycott standpoint immediately or as soon as possible where possible all of the other matters that we have outstanding might be eliminated if the judgment went one way and not the other.

THE COURT: I think that is a good idea. I would even go farther. To me it is appalling the thought of trying to track down all these things. What you are talking about may be necessary. To me the Colonial Cadillac preliminary injunction motion was very instructive.

MR. PERSON: Please don't be guided by that.

THE COURT: Was it Mr. Frank?

MR. PERSON: Yes.

THE COURT: Frank Maiorana was called upon to testify in court, not some deposition room, but in court and he had the opportunity to bring in all the witnesses he could to support the claim he was making and for better or worse we found out the beginning and end of that claim and there was no particular nonsense of evasion or if there was, it was cured.

What bothers me about the deposition process in this case, I heard rumblings about ten depositions --

how many depositions of First National City Bank?

MR. BOYLE: Nine depositions this week, ten next week.

THE COURT: I think this is fantastic and I almost wonder if we couldn't have --

MR. PERSON: Could we consider going to a jury rapidly on the limited issue of liability on the boycott theory and hold aside fleet warranty --

THE COURT: Who would you produce as witnesses now on the boycott issue?

MR. PERSON: Most of the NABCOR people, Frank Maiorana, Anthony Maiorana, Jack Sneider, the other people who were involved in the acquisition of cars, the various NABCOR personnel basically. We have more than enough to support a judgment in our favor. There is ample evidence all over the place.

THE COURT: You would be willing to go to trial on liability as against which defendants?

MR. PERSON: Against the whole deal, everyone, on Counts 1 through 3 limited to the boycott. In other words, forgetting about fleet warranty and all of the other problems that there are structurally on an illegal interference with NABCOR system.

THE COURT: That is fine, but I am asking you,

you list right now who would be your witnesses?

MR. PERSON: I would have to go back and find out each and every person but we have at a minimum, Frank Maiorana, Anthony Maiorana, Ernest Turco, Jack Sneider, Dale Strimple, the various named plaintiffs except for Courtesy Auto Brokers, I don't think they would be that significant. I don't think Robert Heim would be that significant and we have other employees of NABCOR or NABCOR of East New York, Weinberg & Bass, Ed O'Brien. There are probably 25 people in all that we could bring in who can testify to these events. Maybe from 15 to 25.

THE COURT: The trouble may be on exaggerating the import of your statement, Mr. Kaplan, but it seems to me the trouble with this case, the discovery in this case, on discovery depositions, people can say anything, they can talk hearsay, rumor, scuttlebutt or anything they want and a defendant on discovery will almost be obliged to draw that out, you draw everything out but then I suppose the process starts of tracking all that down, seeing if there will be admissible evidence on this particular piece of hearsay and in a case like this, it seems to me that is a horrendous and perhaps ultimately very wasteful job.

I am wondering if we could get a list of witnesses right now who Mr. Person tenders as being his case on the liability issue on the boycott claims.

MR. PERSON: Outside of the fleet. In other words, the fleet is another problem.

THE COURT: Anything. Then it seems to me that defendants might be able to examine and see what is the admissible evidence that they would be able to give and then maybe we could arrive at some sensible litigation on your burdens.

MR. KAPLAN: I think that is an excellent suggestion. One of our interrogatories asks for such a list. I can assure you if Mr. Person gives us an unequivocal list, plus an index as to what incidents these various people know about, we can take their depositions, we can see what we have to do and then we will know where we are going in this case.

THE COURT: Until your witness list is solidified, the defendants don't know who you could bring in and they might feel obligated to trace down all this stuff to see if there is somebody perhaps in East Stroudsburg that might wander in at the trial and testify about something.

MR. KLEINBARD: We are already engaged in that process, your Honor, and we are in exactly that position without naming the particular things that we are in the process of investigating.

THE COURT: I will ask you, Mr. Person, to specify. I don't care what form it is in, whether it is in response to a present interrogatory, but I want to have it ironclad, I want an ironclad final list of the witnesses that you intend to put on.

MR. PERSON: It is impossible, solely because I haven't had discovery. I am finding out now names every day from the City Bank depositions. I have names I never heard of before, so the process of discovery is what is killing the case. It is going to take ten years or two years. I am saying let's go into court right now and have the trial.

THE COURT: Let's go back to that. That is what gave me the cue, and maybe I asked you a question that put it in the wrong category. I will assume that we went into court if not right now very quickly and tried the issue of liability on boycott. Obviously if we went in tomorrow, you would have to start your case.

MR. PERSON: I would have an incomplete case but I have a good case and I would like to present it now before they all die. Rather than presenting all the people

I would five years from now, I think I would be able to prove a prima facie case.

THE COURT: Can we get a list from you?

MR. PERSON: I will deliver a list of all of the people, all known witnesses, but I will not specify each and every subject they can testify to because I don't know.

THE COURT: If we could just get a list of people.

How long will it take you to put on your case?

MR. PERSON: I would say limiting it to our boycott claims, and I am a novice at this so I am taking a guess at it, maybe three weeks would probably cover it. I am just guessing now, full-time five days a week for three weeks, we could probably put on our case. We have probably a hundred different dealers, 60, 70, 80 different dealers to talk about. We have a lot of evidence to present to the Court and I think maybe that is a better way of doing it, just presenting it all at once and not having to spend years following up every little lead. I am game, I will do it. If you give me an opportunity, I will do it, I will take 28 depositions per month for how many months to cover the first 200 people then I will go to the next lawyer.

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THE COURT: I don't know which version of this trial you are now dwelling on.

MR. PERSON: I will do it the land and hard way if necessary. I am offering something different, though. Let's put the issues into the Court even though it is not complete and we will put our side in and let them come up with their side. I will give you the list --

THE COURT: Ultimately that is the way it is going to shake down and we might as well face it now. You could spend five years in discovery and there would be ad finitum of witnesses that you could master and hope for me to master or the jury to master and you boil it down to that.

MR. PERSON: To go through thorough discovery of each of my people is going to take a long time.

THE COURT: Mr. Person,I think I have to ask you and whether we try the case this Nofember or nex t March, I have to have from you, and I think the defendants have to have from you, a list of the people who you claim have admissible testimony and on whom you will rely for your case. Let's just talk about it in terms of category.

You will of course call people connected with the plaintiffs, representatives of each plaintiff.

MR.PERSON: Yes, unless we can stipulate.

THE COURT: Basically, right. What categories outside of, let's call it the plaintiffs?

MR. PERSON: Former employees, number one.

THE COURT: People formerly connected with the plaintiff group, right?

MR. PERSON: Yes.

THE COURT: Outside of that group, who do you intend to call?

MR. PERSON: I will have to think about that. It may be that we have certain people that formerly -- that were never associated with us formerly.

THE COURT: This is the problem from the standpoint of preparation. Are you going to bring in somebody from Philadelphia or Pittsburgh or Atlanta to testify I was present in the advertising office and I heard the Atlanta Journal editor tell the NABCOR franchisee he couldn't possibly carry the advertising because he had been commanded not to do so by General Motors. We have to get to the point where we aren't chasing those issues.

MR. PERSON: If that were admissible on the grounds of an admission of a co-conspirator, I would certainly try tohave that done.

THE COURT: I wish we could know fairly quickly the extent of that kind of evidence. I am not worried about the people in the plaintiff group. It is the possibility of people --

MR. PERSON: It is remote. There aren't that many. I am talking about the NABCOR francisees, even persons who are not plaintiffs. I am sure we could have some in that category as well, but it is essentially a NABCOR situation personnel.

THE COURT: I would think it would be.

Could you, in a week, give us a list, let's have from you a list in a week of your proposed witnesses that you would intend to put on at a trial on the issue of liability and the boycott issue.

MR. PERSON: I will do that and I would like to make it clear, since I haven't interviewed these witnesses myself for the most part, there may be other people who will develop in the course of this investigation of mine or the Court investigation which would suggest that I bring other people in, but I could give what I know up to now in a list within a week and I hope you don't consider it a final list because any kind of discovery could add to that conceivably and I would like to try to eliminate all discovery and go right into trial. That is what I am willing to suggest. We have a very strong case. I don't think you believe it, but I am willing to put it right on the line.

THE COURT: I don't believe it or disbelieve it. I just want to get to trial and I want to save everybody in this room, including myself a lot of what I consider very wasteful efforts if it can be saved.

MR. PERSON: I am willing to try to save all of the extra effort needed to show instructural illegalities which is a very strong part of the case. That is the destination charge monopoly that they have, the warranty programs.

THE COURT: Leave those aside.

MR. PERSON: I want to go right in on the absolute refusals to deal, boycotts and fleet certificates. They interfered with our system and we will show it at trial. We have enough witnesses and we are willing to go on right now with the understanding it is liability also so we don't also have to go through damages at this point and if we should lose on that, then we could go back to the other matters that are uncovered which at this moment are hardly touched upon.

MR. KAPLAN: I think there is one problem. At least as it regards the fleet question, not the destination charge which is absolutely acceptable on the issue of damages.

As regards fleet, you can't cut it in half. Mr. Sneider whose deposition Mr. Person referred to, was talking about dealers who said that because of the way the fleet allotment system worked, they couldn't sell to NABCOR at price X but were willing to see at price Y.

MR. PERSON: Wrong.

MR. KAPLAN: Would you be kind enough.

In many, many cases we have reason to believe that the defense or the response to these claimed refusals to deal are going to involve the very issues which Mr. Person seems to think canbe cut off. That is a difficulty and I think we should face up to it now rather than down the road, which is not to say that we don't think a great shortcut can be ma-e by getting a witness list, deposing those witnesses and seeing where we stand. I think we can make a great savings.

MR. PERSON: The problem is, I am getting nothing in return. I am really deferring everything in my case so all of the time I need right now after four or five years to get discovery, you are thinking possibly we can postpone again. Let's go on trial, mark it down for Monday at 9:00 o'clock and we will be here. We will put on our case right now. I am getting no discovery at all. I am getting discovered to get as everyone knows and so let's put it on, admissible only.

THE COURT: I thought you took nine depositions.

MR. PERSON: For one defendant.

MR. KLEINBARD: He took one today from which we have just come and it is just a rerun of the Colonial Cadillac situation.

MR. PERSON: That is their interpretation. It is essentially a problem where he doesn't know anything about fleet. It is a fleet thing once again, but we have testimony which is admissible. We would like to present it and we are willing to role the dice on that because we dohave a strong case. We have many witnesses and we would like to have a jury here it before all the people die. Maybe we could notice it for trial two weeks from now and we will be here with the witnesses and we will have the trial on liability.

THE COURT: If that could be done, it would be the best solution imaginable. I am afraid --

MR. PERSON: I would like to do it otherwise I will have to insist upon deposing at least 200 people.

THE COURT: We can't set it down two weeks from now.

MR. PERSON: The first available time but not to have me discovered to death in the meantime.

MR. KLEINBARD: I don't understand this problem about his being discovered to death. Mr. Person is now engaged in conducting discovery of the defendants and we are conducting occasional depositionsof his witnesses, not his witnesses, but of the people on the plaintiffs' side or witnesses when we can find them. He is not under any day-to-day schedule as far as we are concerned. We are now producing witnesses for him three or four times a week.

MR. PERSON: Three or four depositions of my people are contemplated. Let me produce them and let's go to trial.

THE COURT: What depositions are now noticed?

MR. KAPLAN: We had noticed seven depositions. We were informed three of them had moved, one of them was not now in NABCOR's employment.

THE COURT: What seven?

MR. KAPLAN: Michael O'Brien who testified in the Colonial Cadillac hearing. He will not be produced. Mr. Person refuses to produce him.

THE COURT You can subpoena him. Michael O'Brien was formerly with NABCOR and he is nq longer an employee?

standing.

THE COURT: What notices of depositions do you have outstanding?

MR. PERSON: The only one that is outstanding -- two of them.

THE COURT: How many depositions have you taken?

MR PERSON: Maybe nine of First National City Bank and one of General Motors.

MR. KLEINBARD: And we have four more scheduled. The five witnesses we discussed in chambers with you a week or so ago.

THE COURT: You have taken ten depositions and you have four more scheduled.

MR. KLEINBARD: He hasn't completed this one. that he took today.

MR. PERSON: Plus two additional persons, two people in retirement from City Bank living in Florida. We are going to Florida next week.

THE COURT: You are getting two more City Bank depositions?

MR. PERSON: Yes, a branch manager that conveyed the refusal to give NABCOR financing. The other person headed up a team of roadmen that went out to the dealers and we believe he might have been one of the persons or would have been the superior.

THE COURT: What information have you gotten from the nine City Bank depositions taken so far?

MR. PERSON: That the refusal to deal may or maynot have been a policy of refusing to give financing to anyone other than a franchise dealer.

THE COURT: Say that again?

MR. PERSON: That City Bank may or may not have a policy, it's a question of fact, of providing floor plan financing to only franchise dealers. If you are not franchised, City Bank's policy may be we will not give financing to them.

I am trying to go further. That is consistent with our allegation and we are trying now to obtain the nature of the arrangement if any, between City Bank and automobile manufacturers which possibly has given rise to that policy if the policy in fact is true.

We have documents which seem to suggest there is this policy, but now I would like to have the objections of Sherman & Sterling overcome so I could get to the nature of the relationship between GM and City Bank.

THE COURT: You have two more City Bank depositions scheduled. You have four more depositions of

General Motors scheduled, the ones we have talked about in my office and what other discovery do you have now that you demanded or noticed or what? You have the interrogatories.

MR. PERSON: About 190 other people in this original statement of people I would like to depose. Some of them I could knock out but there are many people I would like to depose, and I have the interrogatories, there is probably a notice to produce floating around.

THE COURT: So you have a list of about 190 more people you want to depose?

MR. PERSON: Maybe 150. I have plenty of people to depose since plenty of people were involved and these names, by the way, come from the documents. These names are all in the various documents. With one defendant, you could have three or four people. With 30-odd defendants, it is very simple to get to the hundreds.

THE COURT: There must be a better way.

MR. KLEINBARD: If I may say so, I don't think there is any fault with the system. I think the system would lend itself to appropriate handling of this case, but what we had today is a perfect illustration. We produced a rather low level man from Midtown Chevrolet who testified with respect to ten cars that had been ordered before Midtown Chevrolet was acquired by General Motors.

When it was acquired by General Motors, we found out there were ten such orders. We offered to complete the orders. We delivered two and they cancelled eight. That is the bottom line of this depositon that is not yet completed.

In addition to this rather simple information which could have been obtained from this man because Mr. Person had his notes of his converations and he had all the material in front of him, Mr. Person elected to question this man rather extensively about fleet practices and other policies despite the fact that we are producing people who are much higher up in the corporation and whose job it is to deal with fleets on a policy level.

If he is going to do that with each witness, obviously the depositions are going to be very extensive.

THE COURT: I wonder if we shouldn't have a master appointed for further discovery because I can't believe that it takes eleven depositions to do what you need to do with City Bank.

It may be, on the other hand, that the defendants are overdoing it in deposing Mr. Maiorana . I don't kow, but in order for me to know, I have to read all those things and I think that this becomes a very extensive job which I don't think I can tackle.

I think you suggested that we might appoint a master and I think if we were all very, very sensible, I think we could see, arrive at some boundaries with this case without such an extreme and extensive measure, but I think if the case goes on until next spring, and I don't think I could try it before then, I think the ideas of discovery in the case are very, very elaborate and there will be problems which will be very hard for me to handle without really superintending it almost constantly and I can't do it.

MR. PERSON: I think it is a good idea. I wanted it to go to a master because the case I think is more complex than you are willing to allow it to be. That is, the allegations of the complaint are very serious in terms of some structural problems, namely fleet warranty and destination which I think you are not giving proper importance to and we do have to have discovery in these areas and I mean detailed discovery to be able to pinpoint some of the problems.

The problems are -- I will not go into the problems, but today in the deposition we have a person who heads up the fleet section of Midtown Chevrolet who really doesn't know anything about fleet he claims, was upping the price from $25 to $75 to his former boss, so it leads to the suspicion they were trying to prevent NABCOR from buying cars because they upped the price on us and that caused the problem whereby ultimately most of the orders were cancelled.

It is not a very simple thing to just accept Mr. Kleinbard's statement. It is more complex than that and I do try to get at the bottom of it and it does take a detailed deposition and I am willing to do it but it does take a long time. A master can possibly handle this thing with more time.

MR. BOYLE: Your Honor, in opposition to Mr. Person's request for a master, I would like to tell your Honor about one story that occurred during the deposition of First National City Bank where we did go to a master and he explained his position and in two minutes the master ordered a lineup of First National City Bank.

THE COURT: I don't understand.

MR. BOYLE: Mr. Maiorana stated that he had a detailed conversation, he told his entire business to two people in City Bank whose names he couldn't recall. We were in the ninth deposition at this point. None of the people deposed were the people involved. We don't know consisted of Dunn & Bradstreet Reports.

MR. PERSON: The information he is talking about were buried in those files that they produced the day before the deposition.

THE COURT: It is probably a kind of vain effort, but it seems to me we ought to keep, and maybe it will be a process of trial and error, but we ought to keep attempting to limit the discovery. I think so far the discovery could have been worse than it has been. Some limits have been imposed.

Is the idea of a master anything that is any good or is it not?

MR. KLEINBARD: I would think your Honor, the problem of education here is such that before the master could be effective, it would be a long, long time and there are an awful lot of concepts to grasp which your Honor has already learned and it would be almost impossible for a master, for example, to have ruled on today's examination.

THE COURT: The thing is, I am interested in limiting discovery. If you have a deposition where somebody claims that it is running too far afield, why doesn't somebody come down here and ask for a protective order.

MR.KLEINBARD: Your Honor, this was our first day and I attempted to guide the deposition where I thought it ought to go and I think ultimately Mr. Person went to where he ought to have gone, so if you read the end of the deposition, and put that at the beginning, you would have had a proper deposition.

I don't think it is proper to come running to your Honor every fifteen minutes or every hour. Eventually he got to the relevant subject matter of our deposition. I hoped we would finish today but unfortunately he is not. I will not sit there day after day and permit Mr. Person to wander all over the lot with every witness. I just can't do it.

We are producing people who are expert in the particular fields by your Honor's suggestion and I think those are the witnesses that ought to be asked these questions and other people who are basically factual witnesses, as to what happened.

THE COURT: Would it help to have any New York depositions held in the courthouse? At least for a while, so that maybe we could get -- I can familiarize myself with the problem and we may get some kind of ground rules hammered out.

Maybe there is no problem. Maybe I am making a mountain out of a molehill but I don't think there is.

I think there is a problem and I think there has to be a control almost at least for a while almost constantly at these depositions and I am not leveling blame. It may be there is an exaggerated concept of discovery from the defendants, I don't know.

MR. PERSON: It would be easy since we are only several blocks away to take a cab over by appointment.

THE COURT: Where is the deposition?

MR. KLEINBARD: 132 Nassau.

MR. PERSON: There is a lot of electronic equipment on the table and I would like to leave it there.

MR. KLEINBARD: Can we get the so-called tentative list of witnesses and we may even decide that some of them we can't bother chasing; that despite the fact we would like to have all the witnesses, that the effort involved in getting them all is more than we can possibly go through, but at least if we knew that this is the list that we are going to be contending with and that these are the incidents upon which the plaintiff is going to rely, we could begin to plan our defense.

THE COURT: Mr. Person, I am going to leave it this way; I am going to require you to provide a list of witnesses a week from today that you intend to rely on for your case in Cleveland on the boycott issue.

MR. PERSON: Only on the assumption there is going to be no more discovery.

THE COURT: No. We can't assume that and it would be an impossible assumption.

MR. PERSON: I can't limit the list. There may be other things I will find out.

THE COURT: Just hear me out.

You have had this case under your consideration for many years. I am sure that you know certainly, we will start at what I call the plaintiff group; the people formerly or presently associated with the plaintiffs. Who in those people do you intend to call, and you will come back to the subject of amendment at a later point; but I think that in order to get some kind of a beginning to getting the case within bounds, you must furnish a list of the people presently or formerly connected with any of the plaintiffs you intend to call.

Let's go outside of that: I further assume that there are people outside of that first group that you can say that you intend to call. Maybe there is somebody connected with a bank or an auto dealer or formerly with a bank or formerly with an auto dealer, that kind of person.

Now, it is certainly true that normally one would need complete discovery before one could make such a list, but I am going to ask you to do the best you can now to think up the names of the people that even outside the plaintiff organization that you believe have admissible evidence that you would introduce in your case in Cleveland.

MR. PERSON: For what issues, your Honor?

THE COURT: The issue you posed, the boycott issue, Counts 1 through 3, isn't that it?

MR. PERSON: Yes.

THE COURT: I think it may be very good to try those first.

Are you tied down to that list? Well, it would be nice as soon as possible to have a definitive list, but I could not expect you naturally to be tied down right now to your final list of witnesses before you have completed discovery and before the other side has completed discovery, but there still may be some utility to the list, and I think that I am going to take this list very seriously and I am going to permit amendments to the list only upon some kind of a showing. The case is four years old and as we have said 50 or 60 times and we have to begin pinning it down. Let's see how that turns out and let's see if we can use that as a basis for eliminating the need for speculation as to possible people who might some day testify to this.

MR. PERSON: Your Honor, the list would then be limited to liability, not to damages, I gather, since I think if we can go --

THE COURT: I don't see that you can separate. How do you separate liability and damages?

MR. PERSON: I was thinking of experts.

THE COURT: We are not talking about experts. Fact witnesses on Counts 1 through 3, liability and damages.

I would also like to ask, you will have your answers and/or objections to the General Motors latest set of interrogatories in.

MR. PERSON: Just the objections by the one week time and any answers at the normal time.

THE COURT: All right.

Then we have General Motors objections and I think we better have a meeting to go over that material.

Can we set a meeting for October 16 at 4:30?

MR. KLEINBARD: Can we have that on either the 11th or 25th of October? I am sorry, the 24th is our annual firm meeting. The 11th or the 25th.

out to the dealers and drum up business. Two people from City Bank --

THE COURT: Your question was, could you call for a ruling and I don't have any objection.

MR. BOYLE: I don't see the need for a ruling.

THE COURT: You may see it when you get down there.

MR. KAPLAN: Your Honor, one minor thing. We have this direction from the Court to produce documents relating to destination charges. We are prepared to do that. We have one memorandum at the moment and perhaps others which I am advised contain highly confidential material which would be commercially damaging if disclosed generally whether to Ford or American Motors or Chrysler or otherwise.

I have requested for Mr. Person an agreement that we would limit disclosure of that material to trial counsel and it was refused and I would like permission to submit an order limiting disclosure to trial counsel.

MR PERSON: I don't know what the document says.

MR. KAPLAN: Without the order, I don't propose you should find out.

It is the only document which General Motors thus far in the case has requested any such treatment on it and I think under the circumstances, it is appropriate.

MR. KLEINBARD: If it isn't, your Honor, he could always come back in and demonstrate to your Honor.

THE COURT: This relates to something besides the boycott, doesn't it, in any event?

MR. PERSON: Yes.

THE COURT: Submit your crder.

Thank you.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, : 70 Civ. 5421A (TPG)

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

--x

ADDITIONAL ANSWER OF GMAC TO PLAINTIFFS' INTERROGATORIES

This is an additional answer of defendant General Motors Acceptance Corporation ("GMAC") to plaintiff's interrogatories addressed to GMAC, dated July 19, 1974.

Interrogatory No. 89

Identify each person and document consulted or used in the preparation of the answers to each of the above interrogatories.

Answer to Interrogatory No. 89

The following people (other than attorneys and para-professionals) were consulted in the preparation of GMAC's September 18, 1974 answers to plaintiffs' interrogatories:

Wendell L. Hall
General Motors Acceptance Corp.
New York, New York

Jay Ralph Nelson
General Motors Acceptance Corp.
New York, New York

Dated: September 30, 1974

Edward A. Fucillo

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EDWARD A. FUCILLO, being duly sworn, says:

I am Secretary of General Motors Acceptance Corporation.

I have read the attached answer and state that it is true to the best of my information and belief.

Edward A. Fucillo

Sworn to before me this

30th day of September, 1974.

Notary Public

[illegible] SUTTON
[illegible] New York
[illegible] County
[illegible] 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

577

- x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- : 70 Civ. 5421A (TPG)

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- x

ADDITIONAL ANSWERS OF MIDTOWN CHEVROLET-PONTIAC TO PLAINTIFFS' INTERROGATORIES ADDRESSED TO THE DEALER DEFENDANTS

These are additional answers of defendant Midtown Chevrolet-Pontiac, Inc. ("Midtown") to plaintiffs' interrogatories addressed to sixteen automobile dealer defendants, G.M. and Ford, dated July 19, 1974.

Preliminary Statement

Unless otherwise indicated, the answers to interrogatories relate exclusively to time periods beginning on or about December 12, 1966, the date on which G.M. acquired Don Allen Midtown Chevrolet, Inc. and began operating Midtown Chevrolet-Pontiac.

Interrogatory No. 1

Identify and describe each automobile order sent or otherwise communicated to you by Nabcor or any Nabcor franchisee ("Your Customer"), and as to each such order:

(a) identify the individual who placed the order with you;

(b) identify the individual who received the order;

(c) state the date of your receipt of the order;

(d) state the make and year of the automobile ordered;

(e) state whether you rejected the order, and if so

(i) identify the individual who rejected or approved the rejection;

(ii) state the date of such rejection or approval of rejection; and

(iii) state the date the rejection was communicated to Your Customer and identify the individual;

(f) if you transmitted the order to Your Manufacturer, identify the individual who prepared, approved or forwarded the order to Your Manufacturer;

(g) state the date the order was transmitted to Your Manufacturer;

(h) state the date the car was delivered to you;

(i) state the date the car was first available for delivery to Your Customer;

(j) state whether the order was transmitted to Your Manufacturer as a "fleet", "stock" or "retail" order, and all communications with Your Manufacturer in connection therewith;

(k) identify and describe all communications between you and Your Manufacturer concerning the order, the warranty or Your Customer; and

(l) state whether you applied for a fleet rebate with respect to such order and the results of your application.

Answer to Interrogatory No. 1

Neither NABCOR nor any other plaintiffs in this action sent or otherwise communicated any automobile order to Midtown from December 12, 1966 to date.

Interrogatory No. 24

Identify each of the following persons, including a description of the title or job function and duration of employment:

* * * *

M. (TO BE ANSWERED BY MIDTOWN)

1. Walter Englert, Fleet Sales Manager
2. Jerry Allen.

* * * *

Answer to Interrogatory No. 24

1. Walter Englert is the Fleet Manager at Midtown and has held that position since on or about December 12, 1966.

2. Jerry Allen was General Manager of Don Allen Midtown Chevrolet, Inc. prior to December 12, 1966. He has never been employed by Midtown.

Interrogatory No. 25

As to all or any part of the Time Period, identify each person who held any of the offices or positions or is otherwise described below, and as to each person so identified:

(a) describe each office, position or other relationship involved; and

(b) state the duration of each such relationship, as follows:

(a) The owner, partner or any holder of 10% or more of any class of your securities (indicating the percentage of ownership);

(b) President, vice president, secretary, treasurer or other officer;

(c) Member or chairman of the board of directors;

(d) General manager;

(e) Sales manager;

(f) Fleet manager;

(g) Service manager;

(h) Parts manager; and

(i) Used-car manager.

Answer to Interrogatory No. 25

This interrogatory is answered for the period through January 31, 1967.

(a) Midtown is an unincorporated branch of the Chevrolet Motor Division of General Motors Corporation and, accordingly, is wholly owned by General Motors.

(b) None.

(c) Inapplicable to Midtown.

(d) Frederick Watkins*
(Acting Branch Manager)
Address unknown.

* The person indicated is no longer employed by Midtown. The addresses listed are those last known to Midtown.

(e) Donald Somers
Current Address:
Midtown Chevrolet-Pontiac
New York, New York

(f) Walter Englert
Current Address:
Midtown Chevrolet-Pontiac
New York, New York

(g) Andy Marino*
2414 Avenue K
Brooklyn, New York

(h) Hal Schumacher*
53 Sycamore Street
West Hempstead, New York

(i) Donald Orlowski*
40 Wicks Drive
Harrington Park, New Jersey

* The person indicated is no longer employed by Midtown. The addresses listed are those last known to Midtown.

Interrogatory No. 32

State whether you or any subsidiary or affiliate engaged in the leasing of new cars, and if so, identify each of your fleet certificates or fleet numbers and the duration any fleet status has been held by you.

Answer to Interrogatory No. 32

No.

Interrogatory No. 70

Describe each way in which you compete with leasing companies or your Leasing Division in your business of selling new cars.

Answer to Interrogatory No. 70

Midtown has no Leasing Division and has not had such a division at any time from December 12, 1966 to date.

Midtown engages in the sale of new automobiles by the methods normally employed in that business. It makes no effort to compete specifically with leasing companies.

Interrogatory No. 89

Identify each of your Personnel who at any time was a member of the Board of Directors or any advisory boards of or was an advisor or consultant to, any of the Defendant BBB's relating in whole or in part to the advertising, financing, servicing, leasing or selling of new automobiles to the public, and as to each of such Personnel:

(i) state his title and function with you;

(ii) identify his immediate superior at all times, including the superior's title and function with you;

(iii) state the name of the Defendant BBB involved;

(iv) state the position or function with the Defendant BBB of any such Personnel;

(v) state the date of each appointment or re-appointment to the BBB;

(vi) state the date of termination of such person's position with the BBB;

(vii) state the identity of each person who made or approved the nomination or appointment or requested or approved any termination;

(viii) describe any instructions, rules, procedures or suggestions given by you relating to the position or function with the Defendant BBB (in lieu of any description contained in any documents, defendant may attach a copy of each relevant document); and

(ix) identify each person who prepared, reviewed, approved or issued any such instructions, rules, procedures or suggestions.

Answer to Interrogatory No. 89

None.

Interrogatory No. 89*

Identify each person (other than any attorney acting solely in such capacity) who directed or participated in any file search for documents for production in this action.

Answer to Interrogatory No. 89*

Midtown files were searched under the direction of Walter Englert and Donald Somers.

Interrogatory No. 90

Identify each person and document consulted or used in the preparation of the answers to any of the above interrogatories.

Answer to Interrogatory No. 90

Donald Somers and Walter Englert were consulted in the preparation of responses pertaining to Midtown.

Dated: September 30, 1974

Donald S. Somers

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x
NATIONAL AUTO BROKERS CORP., et al., : 70 Civ. 5421A (TPG)
Plaintiffs, : WITNESS LIST
-against- : (Boycott Claims)
GENERAL MOTORS CORPORATION, et al., :
Defendants. :
- -x

Pursuant to the order of Judge Thomas P. Griesa on September 27, 1974, Plaintiffs hereby submit a list of the witnesses Plaintiffs would call with respect to the boycott claims made in Count 1 of the complaint (but excluding witnesses who would testify only with respect to other claims made by Plaintiffs in said count), based on the assumptions that no party is to conduct any further discovery in the action and that the trial is to commence in the near future. The witnesses which would be called by Plaintiffs based on the foregoing assumptions are as follows:

Name	Last-Known Address	Former Position
1. Court Ashton	Barton-Coronet, Inc. 3 W. 57th St. New York, NY	Nabcor franchise man
2. Herbert A. Bly	11519 Southland Rd. Cincinnati, Ohio	Nabcor Master Broker
3. Donald A. Bolling	Box 173 E. Aurora, NY	Nabcor franchisee
4. Joe Bohnert	Walter H. Schaltz Sales & Service 16-20 Passaic St. Trenton, NJ	Salesman
5. William Britt	812 Kenmore Rd. Chapel Hill, NC	Nabcor Master Broker
6. Marguerite Cavaliere	10 Cross St. Bronxville NY	Nabcor employee
7. Gerald L. Cerasoli	4630 Geary Blvd. San Francisco, Cal.	Nabcor franchise man
8. Charles Cohen	112 Lorben Rd. Monsey, NY	Nabcor franchisee and employee

9. [illegible] Collins	[illegible] Admiral Wilson Blvd. Camden, NJ	[illegible]
10. B. Thomas Collins	6345 Germantown Ave. Philadelphia, Pa.	Nabcor employee
11. John Conley	National Association Dealers Association 2000 K St., NW Washington, DC	Public Relations Director
12. Richard A. Cox	5814 Morris St. Philadelphia, Pa.	Partner of Cox & Tanz
13. Peter J. Cucci	34 Burgess Ave. Huntington Station, NY	Partner of Plaintiff Courtesy Auto Brokers.
14. Michael Dana	627 E. 237th St. Bronx NY Franchise Programs, Inc. 6 Xavier Dr. # 207 Yonkers, NY	Nabcor franchise man
15. Jack Daniels	Wynwood, Pa.	Nabcor franchise man
16. Joe Demers		Nabcor franchise man
17. Alan Dennison	2 Ralph Rd. New Rochelle, NY	Nabcor franchise man and franchisee
18. John Dougal	Quebec Drive Huntington Station, NY	Partner of Plaintiff Courtesy Auto Brokers.
19. John Faunce	9418 Kirkwood St. Philadelphia, Pa.	Nabcor franchise man
20. Frank Fisher	Box 105 Newtown, Pa.	Nabcor franchise man
21. Hugh J. Gallagher	17 St. Asaphs Rd. Bala Cynwyd, Pa.	Nabcor training manager
22. John J. Gallagher	1845 73rd Ave. Philadelphia, Pa.	Nabcor training manager
23. John S. Gebbia	929 Burke Ave. Bronx, NY	Nabcor franchise man
24. Lee Gehmen	47 W. Highland Ave. Philadelphia, Pa.	Nabcor franchise man
25. Isadore Gitler	2419 No. 56th St. Philadelphia, Pa.	Nabcor accountant
26. Abe Goldberg	5572 Netherland Ave. Bronx, NY	Nabcor franchise man
27. Daniel Goldstein		Nabcor franchise man

28. John A. Corder	Greater New York Long Island & Westchester Automobile Dealers Association, Inc. Hotel Granada 268 Ashland Place Brooklyn, NY	Executive Vice President
29. John Grassia	110 Forbell St. Brooklyn, NY	Nabcor franchisee
30. W. E. H. Green	109 E. 9th St. New York, NY 2727 Ocean Pkwy Brooklyn, NY	Nabcor franchise man
31. David Creytak	2611 Nelson Lane Sherwood Park No. 1 Wilmington, Dela.	Manager & Vice President of Nabcor Delaware Auto Brokers, Inc., a Nabcor franchisee
32. Robert B. Hein	719 Prospect Ave. Bethlehem, Pa.	Plaintiff
33. Ken James	Creative Marketing/ Sales Promotion 1279 Sussex Rd. West Englewood, NJ	Officer; also of Metro Advertising
34. William H. Janock	P.O. Box 166 Pottstown, Pa.	Nabcor franchise man
35. William Judy		Nabcor franchise man
36. Jack Kirschberger	Ki-Po Motors West Avenue & Ohio St. Lockport, NY	Principal
37. Dick Lovnas	Franchises Int'l Hartford, Conn.	Pres.
38. William Lovell	Rohrer Chevrolet Admiral Wilson Blvd. Camden, NJ	Employee
39. Sylvia F. Macis	53 Abbey Place Yonkers, NY	Nabcor employee
40. Hilda Madden	Rohrer Chevrolet Admiral Wilson Blvd. Camden, NJ	Employee
41. Sid Madonick	314 Covered Bridge Road Cherry Hill, NJ	Nabcor franchise man
42. Anthony Maiorana	925 McKean St. Philadelphia, Pa.	Plaintiff
43. Frank Maiorana	856 Meadowood Lane Warminster, Pa.	Plaintiff
44. Rita Maiorana	10818 Kelvin Ave. Philadelphia, Pa.	Nabcor employee

45. [illegible]	Wilmington, Del.	[illegible]
46. Peter J. McElroy	301 High Rd. Salem Harbour Andalusia Pa.	Nabcor Master Broker
47. Paul C. Medeiro	9525 Evans St. Philadelphia, Pa.	Nabcor franchise man
48. Van Miller	National Better Business Bureau 845 Third Ave. New York, NY	President
49. Kirk Mitchell	Randolph Chevrolet NJ	President, officer of New Jersey Automobile Dealers Association
50. A. Montiglio	Motor Vehicle Dept. White Plains, NY	Principal Motor Vehicle License Examiner
51. Harold Morrell	Ray Raines Cadillac Nesconset Highway Smithtown NY	Partner
52. H. C. Morrison	145 Callie Largo St. Hollywood, Fla.	Don Allen National Fleet Manager, and Nabcor National Fleet Manager
53. William Nash	796 Bobwhite Lane Elkins Park, Pa.	Nabcor franchise man
54. Henry O. Noyes	Box 439 A Rte 3 Bloomsburg, Pa.	Nabcor training manager
55. Victor H. Nyborg	Association of Better Business Bureaus International Chrysler Building New York, NY	President
56. Edward H. O'Brien	99 James St. Westwood, NJ	Nabcor manager
57. Michael J. O'Brien		Nabcor franchise man
58. Richard Owens	6390 Campbell Blvd. Lockport, NY	Nabcor franchisee
59. Craig Phlanard		None
60. Dan Porless	Garden City, NY	None
61. Irving Purcell	120 Wall St. New York, NY	Nabcor accountant
62. Joseph Quinn	42 Donor Ave. E. Paterson, NJ	Nabcor franchise man

		[illegible] Buffalo, NY	[illegible]
64.	H. Eston Regan	Atlanta Automobile Association 1419 Atlanta Merchandise Mart Building Atlanta, Ga.	Secretary
65.	Ray Rieger	Better Business Bureau of Metropolitan Dayton, Inc. 7 N. Fourth St. - Suite 2000 Knott Building Dayton, Ohio	President
		Dayton Area Automobile Dealers Association Dayton, Ohio	Executive
66.	Thomas C. Roberts	Association of Better Business Bureaus International 1729 H St., NW Washington, DC	Vice President
66A	A. M. Robinson	9322 Cloverly Rd. Philadelphia, Pa.	Nabcor franchise man
67.	Rodney Rushmore	Ghent, NY	Nabcor franchisee
68.	Edward T. Ryan	Dealers & Repairers Division Conn. Motor Vehicle Dept. Wethersfield, Conn.	Acting Division Chief
69.	James J. Ryno, Jr.	Flower Hill Rd. RD 1 Langhorne, Pa.	Nabcor training manager
70.	Fred Sanders	144 Susan Dr. Elkins Park, Pa.	Nabcor franchise man
71.	Albert V. Santella	375 Abbott Rd. Paramus, NJ	Nabcor franchise man
72.	Anthony J. Santoro	1 Oakridge Place Eastchester, NY	Nabcor franchise man
73.	Walter H. Schultz	16-20 Passaic St. Trenton, NJ	Nabcor franchisee
74.	Henry Settle	1919 So. 70th St. Philadelphia, Pa.	Nabcor franchisee
75.	Bernard Silverstein	White Plains or Mt. Vernon	Nabcor employee
76.	Louis Sisapel	Better Business Bureau of Metropolitan New York, Inc. 110 Fifth Ave. New York, NY	Employee

77. [illegible]	[illegible] Bureau of Metropolitan Atlanta, Inc. 212 Healey Building Altanta, Ga.	[illegible]
78 Jack Snyder	3359 Langdon St. Philadelphia, Pa.	Nabcor employee
79. Lawrence Spector	National Tax Institute 1 East Penn Plaza - 13th floor - Rm 1313 Philadelphia, Pa.	Nabcor accountant
80. John O. Spooner	Creative Marketing/ Sales Promotion 1279 Sussex Rd. West Englewood, NJ	President
81. Dale Strimple	1533 Sand Ridge Rd. Alden NY	Plaintiff
82. Edward H. Swanton	640 Avondale Rd. Philadephia, Pa.	Nabcor franchise man
83. Eugene R. Tanz	20th & Spruce Streets Philadelphia, Pa.	Principal of Cox & Tanz
84. Evan J. Thomas, Jr.	12 Cottage Hill Pottsville, Pa.	Nabcor franchise man
85. J. Harvey Tilley	1381 Glenbrook Rd. Meadowbrook, Pa.	Nabcor franchise man
86. James Tracey	Wollman, Schlesinger & Tracey Suburban Station Bldg. JFK Blvd. Philadelphia, Pa.	Partner
87. Louis C. Troise	Better Business Bureau of Metropolitan New York, Inc. 110 Fifth Ave. New York, NY	Automotive Consultant
88. Ernest M. Turco	1204A Saw Mill River Road Yonkers, NY	Pres. of Plaintiff Nabcor of East New York, Inc.
89. John J. Tynan	Conn. Motor Vehicle Dept. Wethersfield, Conn.	Chief
90. Anthony Ursomarso	Union Park Pontiac Wilmington, Dela.	Officer
	Delaware Dealers Association Wilmington, Dela.	Officer
91. William Vass	140-16 Holly Ave. Flushing NY	Nabcor franchise man

92. William Vand[illegible]	172 [illegible] Ave. Newburgh, NY	Habcor [illegible]
93. James Wehlan		Habcor franchise man
94. Norman Weinberg	10 Fairway Dr. Eastchester, NY	Habcor office manager
95. George Widmer	1133 Rose Glen Rd. Gladwyne, Pa.	Habcor training manager
96. Woody Woodard	Naperville, Ill.	Habcor National Fleet Manager
97. Mr. Wright	Washington Evening Star Washington, DC	Action Line Reporter
98. Elfriede Young	7830 Black River Rd. Watertown, NY	Wife of Plaintiff
99. Alfred J. Young, Sr.	7830 Black River Rd. Watertown, NY	Plaintiff

In the event the boycott claims in count 1 do not go to trial shortly or in the event any defendant obtains further discovery, Plaintiffs anticipate taking the deposition of some or all of the following persons, any of whom Plaintiffs may decide to call as witnesses (whether or not they have been deposed):

A. Any of the persons named or described in STATEMENT BY PLAINTIFFS IDENTIFYING OFFICIALS AND EMPLOYEES OF DEFENDANTS TO BE DEPOSED BY PLAINTIFFS, dated July 25, 1974 and filed in this Court on July 25, 1974.

B. Any of the following persons:

Name	Last-Known Address	Former Position
Fred Abrams	Def't Luby Chevrolet Co., Inc. 105-20 Queens Blvd. Forest Hills, NY	General Manager
Mark Arnold	Def't Mark Buick Corp. 291 Tuckahoe Rd. Yonkers, NY	Officer or employee
J. James Bonfield	Queens City Chevrolet 414 E. Court St. Cincinnati, Ohio	Manager
Anthony N. Borelli	Semmes Motors, Inc. Central Ave & Ardsley Rd. Scarsdale, NY	Sales Manager

Mr. Brost	Brost Motors, Inc. Buffalo, NY	President
A. J. Cohan	Dursi-Fordham Lincoln Mercury, Inc. 630 E. Fordham Rd. Bronx, NY	Sales Manager
Jim Commerford	Koelle-Greenwood Ford 161 W. Chelten Ave. Philadelphia, Pa.	Officer or employee
Dave H. Costa	Countryside Ford Route 202 Bernardsville, NJ	President
Mr. Blank	Cunningham Buick Eastchester NY	Officer or Manager
Paul Denaro	C & C Motors, Inc. 1100 Easton Rd. Rt. 611 Horsham, Pa.	Manager
Ken Dengler	Def't Ken Dengler	President
E. J. DePhillipo	Chestnut Motors, Inc. 4601 Chestnut St. Philadelphia, Pa.	General Manager
Joseph Distasio	Chief Pontiac Rt. 46 Little Falls, NJ	President
Mrs. Dolak	Unknown	Customer of Chester Branch of Philadelphia National Bank
Donald J. Doldy	Walter H. Kollbar Pontiac Rt. 130 South of Stockton St. Hightstown, NJ	Sales Manager
Mr. Echinrude	Def't GM head of Chev. Phila. Zone Roadmen	
Henry Faulkner	Henry Faulkner, Inc. 1546 Cottman Ave. Philadelphia, Pa.	President.
Jim Finnegan	Curry Chevrolet Sales & Service, Inc. 727 Central Avenue Scarsdale, NY	General Manager
Glen Fisher	Dave Hallman Chevrolet, Inc. Hamburg, NY	Fleet Manager
Donald Fixelle	Herbert Rosenstock Inc. 275 Seventh Ave (at 25th St.) New York, NY	Fleet Sales Manager

George Foy	Foy Buick Chelton Avenue Philadelphia, Pa.	President
Pat Freda	A. C. Chevrolet 3085 Kennedy Blvd. Jersey City, NJ	Officer or Employee
Jack Gogle	Village Ford Delran, NJ	Principal
Hank Goldberg	Bates Pontiac Cor; 353 Grand Concourse Bronx, NY	Fleet Manager
Allan Goldstein	Matt Saer Chevrolet Cottman at Torresdale Ave's Philadelphia, Pa.	Sales Manager
Don Graeve	Charles S. Winner, Inc. 444 Haddon Ave. Haddonfield, NJ	Fleet Sales Manager
Mildred Hartsough	Colonial Cadillac 1655 No. Olden Ave. Trenton, NJ 476 South Logan Ave. Trenton, NJ	Fleet Clerk
Richard Holstead	Hamister-Gillogly Chevrolet, Inc. - Defendant 1777 Union Rd. West Seneca, NY	Sales Manager
Charles C. Housenick, II	Housenick Motor Co. Corner Main and East Streets Bloonsberg, Pa.	General Manager
Donald Hultin	Def't GM Pontiac Zone man (Wilmington, Dela.)	
Ed Hunter	Philadelphia Eve. Bulletin Philadelphia, Pa.	Adv. Dept.
Robert Jackson	Jack Stevens Buick Buffalo, NY	Sales Manager
H. L. Johnson	Koelle-Greenwood Ford 161 W. Chelten Ave. Philadelphia, Pa.	Fleet Manager
Mr. Jones	Philadelphia National Bank Chester Branch Chester, Pa.	Employee
Mrs. Kelley	Philadelphia Eve. Bulletin Philadelphia, Pa.	Night Supervisor
Mr. Koelle	Koelle-Greenwood Ford 161 W. Chelten Ave. Philadelphia, Pa.	President

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[illegible]	[illegible] Rt. 130 South of Stockton St. Hightstown, NJ	
Morton Krause	Krause Oldsmobile, Inc. Rt. 70 Marlton Pike West Cherry Hill, NJ	President
Edward Laks	Laks Chevrolet Buffalo, NY	President
Ray Laks	Laks Chevrolet Buffalo, NY	Vice President
Irwin H. Levy	Woodbridge Motors, Inc. U.S. Rt. 1 and Ronson Rd. Woodbridge NJ	General Sales Mgr
William MacIntyre	Rehrer Chevrolet, Inc. Admiral Wilson Blvd. Camden, NJ	Fleet Mgr.
Gene McCracken	Curry Chevrolet Sales & Service, Inc. 727 Central Ave. Scarsdale, NY	Fleet Manager
Mrs. Melcciare	Philadelphia National Bank - Chester Branch Chester, Pa.	Employee
Mrs. Moore	Philadelphia Bulletin Philadelphia, Pa.	Employee
Jim Morley	John B. White Ford 6600 No. Br[illegible] St. Philadelphia, Pa.	Fleet Manager
Robert Murray	Colonial Cadillac 1659 No. Olden Ave. Trenton, NJ	Vice President
Mr. Perry	Phila. Evening Bulletin Philadelphia, Pa.	Employee
Patricia Pietrowski	Cleveland Plain Dealer Cleveland, Ohio	Classified Adv Dept
Mr. Plachter	Plachter-Serubo Cadillac Adams Ave. at Roosevelt Blvd. Philadelphia, Pa.	President
Rocky Polecaro	Rock Hill Pontiac Wilmington, Dela.	Officer or employee
Jack Pollino	Pollino Buick-Pontiac, Inc. Bethlehem Pike & Washington Lane Ambler, Pa.	President
Harold B. Robinson	Harold B. Robinson Auto Sales Co. 601 N. Broad St. Philadelphia, Pa.	President

Herbert Rosenstock	Herbert Rosenstock, Inc. 275 Seventh Ave. New York, NY	President
Bob Rosenthal	Chestnut Motors, Inc. 4601 Chestnut St Philadelphia, Pa.	President
Alan Rotschild	James M. Sharkey Buick, Inc. 322 South Broadway Yonkers, NY	Sales Manager
Bill Rusher	Rusher Ford Sales, Inc Alden, NY	President
William A. Semmes	Semmes Motors, Inc. Central Ave & Ardsley Rd. Scarsdale, NY	President
Peter Serubo	Plachter-Serubo Cadillac Adams Ave at Roosevelt Blvd. Philadelphia, Pa.	Vice President
Gerald Sheer	Bates Pontiac Corp. 353 Grand Concourse Bronx, NY	Vice Pres. & Gen. Mgr.
Matt Slap	Matt Slap Chevrolet Cottman at Torresdale Ave's Philadelphia, Pa.	President
Robert G. Sloane	Sloane Chevrolet 6800 Rising Sun Ave. Philadelphia, Pa.	President
Ted Steen	Charles S. Winner, Inc. 444 Haddon Ave. Haddonfield, NY	Manager
Stanley C. Stewart	Reading Motor Sales, Inc. 1000 Lancaster Ave. Reading, Pa.	Gen. Mgr.
Tony Swidert	Village Ford Delran, NJ	Officer
S. P. Tauder	Tauder Ford, Inc. Valley Forge Rd. Phoenixville, Pa.	President
Glen Taylor	Def't Paragon Oldsmobile 56-02 Northern Blvd. Woodside, NY.	Manager
Mr. Thompson	Def't Newsday, Inc. Garden City, NY	Employee
Rudy Valentino	Rudy Valentino Ford Pa.	President
Toby Wells	Village Ford Delran, NJ	Fleet Manager

(Unknown)	John [illegible] White Ford 6600 No. Broad St. Philadelphia, Pa.	General Manager
Al Wilson	Al Wilson Pontiac 555 West Street Rd. Warminster, Pa.	President
Jack Wilson	Al Wilson Pontiac 555 West Street Rd. Warminster, Pa.	Vice President - Sales
Jim Younger	Rock Hill Pontiac Wilmington, Dela.	Officer or employee
George Yovanovich	Countryside Ford Rt. 202 Bernardsville NJ	Salesman
Mr. Tomlinson	M. P. Tomlinson Oldsmobile Cadillac Lakeland, Fla.	President
Don Fenton	Tom Edwards Chevrolet Chicago, Ill.	Fleet Manager
Leo L. Leichter	Jerry Biggers Chevrolet 227 S. Grove Ave. Elgin, Ill.	President
Delores T. Vaszily	Jerry Biggers Chevrolet 227 S. Grove Ave. Elgin, Ill.	Fleet Manager
E. W. Lawrence	Empire Ford Sales, Inc. 121 Stevens Ave. Mt. Vernon, NY	Fleet Manager
Mr. Epstein	Epstein Pontiac Chicago, Ill.	President
Percy H. Kline	Kline Pontiac 651 No. Main St. Doylestown Pa	Sales Manager
Frances X. O'Brien	Def't Paragon Oldsmobile 56-02 Northern Blvd. Woodside, NY	General Manager
Ted Pitcher	Pitcairn Oldsmobile Pa.	Officer

Dated: New York, New York
October 8, 1974

Carl E. Person

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THE COURT: There is one class of objections to the plaintiffs' interrogatories addressed to General Motors which I will take and I am sure we can treat this as kind of a sample treatment but let us focus on those interrogatories to General Motors for the moment.

Interrogatories 1 through 7, 9, 11, 12 and 15 request communications of various kinds and as I understand it the objection is to the interrogatory, or one objection is to the interrogatories to the extent they should be interpreted to call for oral communications, right?

MR. KLEINBARD: That is right, your Honor.

THE COURT: You intend they be so interpreted, Mr. Person?

MR. PERSON: Yes, definitely.

THE COURT: All right, I will sustain the objection It just goes without saying this is not the way to have a description of oral communications with the broad range of people referred to, and I know that I immediately get into a dilemma because I don't permit the plaintiffs to get descriptions of oral communications and interrogatories.

The demand will immediately be made to take large numbers of depositions and I have indicated a desire to limit the depositions. I don't know how this will be done but in some way this action has to get focused and we

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are not going to have thousands of pages of interrogatory answers describing communications nor are we going to have the defendants under the burden of addressing questionnaires to dozens of people to inquire about communications or any of this other kind of thing that would be necessary in order to respond to these interrogatories.

And at the same time we can't have endless depositions. and it seems to me that there is going to be a way to arrive at to focus the discovery so that a relatively few depositions can be taken of General Motors personnel who would have most knowledge on the subjects involved and those depositions can pretty well cover what has to be covered.

And it doesn't have to be 25 people or 40 people or anything like that. Now I don't know at this poir how that is going to be done but it is going to be done. And the objections made to those interrogatories are sustained.

Now, there is another class of objections which I guess goes to even -- I don't know, this objection about the interrogatories calling for communications with Nabcor franchisees other than the named plaintiffs, in other words, the members of the class, is that objected to even as to written documents? Or not?

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MR. KLEINBARD: Well, yes. It is, your Honor. We have produced only documents relating to Nabcor related plaintiffs,not just to franchisees.

THE COURT: I am not having documents produced that go to the non-plaintiff franchisees. Now, if I missed any objections just get me back on the track because I am not completely organized, I am sorry to say. But --

MR. KLEINBARD: Well, your Honor, could we handle that as we have in the interrogatories by just saying interrogatories addressed to what we call third persons which include independent dealers, Nabcor franchisees, independent brokers and so forth we are proposing not to be -- not to respond to interrogatories addressed to those persons because your Honor has already so ruled with respect to documents.

THE COURT: Well, I am talking now about the members of the people who were sought to be represented as class members.

MR. KLEINBARD: Right, but it goes even beyond that. It goes even beyond the people in the class. Those people who were independent brokers, independent dealers --

THE COURT: I am looking at interrogatory now that talks, interrogatory 1 and it talks about Nabcor and any Nabcor franchisees.

MR. PERSON: No. 9, for example, your Honor.

THE COURT: All right. Identify and describe all communications among your personnel concerning any complaints about Nabcor, any Nabcor franchisee or any independent dealer including any complaints about loss through car sales, advertising or warranty work.

Well, I would certainly strike the interrogatory insofar as it talks about Nabcor franchisees and independent dealers who are not plaintiffs here. Are there other types of interrogatories which call for information about independent dealers?

MR. KLEINBARD: No, I think there are interrogatories and we will come to them, your Honor. I can't remember them by heart which will refer to certain third persons that fall in neither category.

THE COURT: I think I have taken care of 1 through 7.

MR. KLEINBARD: Right.

THE COURT: 8 is a problem. The subject matter of 8 is obviously crucial and it asks for an identification and description of each new automobile order sent to General Motors by any of the General Motors franchisees on behalf of Nabcor or any Nabcor franchisee,

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and asks for a description of various things about such orders.

Now I would initially strike the request relating to any Nabcor franchisee other than the plaintiffs but as to the plaintiffs I mean this is crucial to the case and as I understand it General Motors takes the position that in furnishing the files as to these orders it has complied.

Now I don't know whether that -- I don't know what was in the files so I don't know whether it's complied with or not.

MR. KLEINBARD: Well, this was the only informationwe could locate, your Honor, in response to this interrogatory.

Now, I don't know how else to deal with it. I haven't read every file either. We have produced whatever we could with respect to these orders.

THE COURT: What I hage in mind, not knowing what was in the file I don't know whether the file would show whether the order was rejected or accepted.

Presumably it would but I really don't know. And I don't know if there might be other information beyond the file as to the reason for acceptance or rejection or other information covered by this interrogatory.

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So it is a little hard for me to quickly deal with interrogatory 8 because the subject matter is the heart of the case.

MR. KAPLAN: I would just like to tell you how we handle it and what has been done and what the problems were. You recall in April there was a request for documents like this and what was done at that time is that to the extent that we had serial numbers of automobiles that went through the Nabcor system and they could be traced, various types of what we call transaction documents were searched according to serial numbers and that produced some quantity of warranty records and some quantity of orders and so forth. There is very little because many of these files of Nabcor's lack serial numbers and many of them are way before the record retention policies retained any records.

Because they have been basically out of the car business for the past couple of years.

So we have prouduced what we could get from serial numbers. We also did file so much at the zone level --

THE COURT: Wait a minute, excuse me.

How did you start, what was the initial identification method that you have from Nabcor?

MR. KAPLAN: We took the serial numbers off the automobile transaction documents that Nabcor provided

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and ran those serial numbers against whatever indices General Motors had to seek that kind of information.

Now, in terms of any kind of unusual occurrence that might have happened with respect to any particular order there with document searches on the names of all the named plaintiffs and various other names that are relevant to the case conducted at the zone office level where orders would have come in and whatever turned up during that search has been turned over and at this point if there is any particular order or incident with respect to which information beyond what we have is required, we have just got to have some more information to pinpoint it because we ha ve done I think whatever could reasonably be done.

THE COURT: How many were involved, do you remember that?

MR. KAPLAN: Wehad serial numbers on somewhere in the range of 3 to 500 automobiles, I believe. I am really not certain of that figure.

And we think that we are about 800 cars over it and we probably had numbers on about, I am just guessing now, 50 to 80 per cent of the GM cars that Nabcor handled.

THE COURT: Wait a minute. You had numbers in your --

MR. KAPLAN: No, we had serial numbers.

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Now, in terms of the number of vehicles from which that produced doucments I will be perfectly candid. It was quite small. I don't know what the number was. But the fact we don't have these order forms going back to 1966 --

THE COURT: I am still not clear. Mr. Person informed you were in some form a list of the transactions that he claimed Nabcor plaintiffs had with GM,either orders made or orders filled or what, is that right?

MR. KAPLAN: Essentially, that is right.

THE COURT: All right.

Now, then how did he identify those?

MR. KAPLAN: He produced what he calls, what his client calls deal folders which contained for each automobile a -- all the relevant documents, order forms and the like --

THE COURT: How many such folders were produced?

MR. KAPLAN: I think there were between five and six hundred.

THE COURT: Five to six hundred. Now you are saying in some cases there were auto serial numbers.

MR. KAPLAN: That is correct.

THE COURT: If an order was rejected, there

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wouldn't be an auto serial number, would there?

MR. KAPLAN: That is right.

THE COURT: Now, were there some instances where the -- where there was some notation that the order was rejected or not filled?

MR. KAPLAN: There was a small number of Nabcor folders marked "Cancelled" and in many cases there were reasons that had nothing to do with General Motors apparently on the face of it such as customer cancelled or customer wouldn't pay or something like that. And wherever there were serial numbers we followed up. We searched files with respect to every dealer that we have any knowledge that they dealt with as far as I am aware of. That is every GM dealer.

THE COURT: Have you reviewed the documents that General Motors has produced?

MR. PERSON: I looked at perhaps two or three hundred pieces of paper which appeared to be production records, the fact that a car had been built, and on none of these did I see any indication of anything that wouldbe of assistance to me other than the fact that the car was built.

There were no notations of any kind and they weren't the orders themselves for the car but they were documents that I think came about after production.

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THE COURT: I repeat, and I certainly mean it, that I think this subject matter is germane, there is no question about it, but what I am trying to think through is how to get the information that you need to the extent it exists. Now I could see that if the interrogatory were literally answered we could have a listing of several hundred orders, something like that, and lots of useful information given here, some time saying no informaiton found, or maybe you would have the serial number of the car or some other things that would -- you know we could have pages and pages of information and we would notcome out anywhere.

So I don't understand the problem well enough to really deal with it very well but it does seem to me that there ought to be a way for you to get information about -- you are concentrating on the situation where attempts were made to buy cars and those attempts were frustrated.

MR. PERSON: And often no car came about. In other words, we submitted orders in the cases of refusals, or we had dealt with these companies previously and then the company stopped dealing with us and frequently they rejected orders or they didn't deliver the cars that we had ordered. Maybe they threw away the order, maybe they submitted it to the factory, maybe a car was built and taken away by zone.

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THE COURT: Well, now how many instances were there of those situations? That is the guts of your case.

MR. PERSON: Your Honor, in Don Allen, which is maybe not a typical situation, we have had ten orders that we had placed with Don Allen at the time that Midtown Chevrolet took over Don Allen. There is a dispute as to whether there was a refusal or possibly some other reason for the problems that arose.

But finally we did buy two of the ten cars and we had to put our orders in through Luby, I think it was for the remaining eight. Then we wrote a letter technically cancelling the order.

THE COURT: All right. But you would like to know the history behind the problem of the eight.

MR. PERSON: Right, and even if the other two, all ten are part of the same problem.

THE COURT: All right.

MR. KLEINBARD: Excuse me, your Honor. I don't want to interrupt your thought process but Mr. Person did do that with respect to Mr. Englert of Midtown Chevrolet.

THE COURT: What do you mean he did do that?

MR. KLEINBARD: He deposed Mr. Englert

and he has a history of what happened to the ten cars in question. And what the depositions have demonstrated at least to me beyond any peradventure of doubt, is that the only way that he is going to get the information that he is seeking is really at the dealer level with respect to the incidents that he knows about. In other words, if there are other Midtown Chevrolet incidents, and, by the way, our position there is that of course we supplied the cars that were ordered and at the price that was placed by Don Allen Chevrolet before we took it over and we honored that price and he cancelled out eight out of the ten.

But I put that aside. I am not arguing the merits of that now.

But the point is he developed whatever there was to develop on the factual side because he had an incident that he knew about and he was able to ask somebody at the relevant dealership what it was all about and what are the records.

There is nothing that we can produce on the factory level that we haven't already produced.

So he is going to have to go the other way round.

THE COURT: Well, let us take the Don Allen situation.

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Does General Motors have any documents at all relating --

MR. KLEINBARD: We produced the documents that we have.

THE COURT: What kind of documents didyou produce?

MR. KLEINBARD: We produced the invoices , we produced correspondence, we produced the cancellation letter, cancelling the order.

THE COURT: From whom to whom?

MR. KLEINBARD: From Nabcor to Midtown Chevrolet.

THE COURT: Well, was there any document, were there documents within General Motors or documents flowing between General Motors and Midtown that discussed these cars?

MR. KLEINBARD: Midtown happens to be or became a dealership owned by General Motors. So that in that sense all of the documents that were produced by Midtown are General Motors documents. But there were no documents going from Midtown Chevrolet to factory people or to management at GM.

In other words, it was as if it was an isolated dealership it was no different than any other dealer for this

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purpose. And what we have are the letters back and forth between Nabcor and Midtown, we have the -- first there is an order, then there is -- changethe order and I want this car, I dn't want this car, back and forth several times and eventually a cancellation.

THE COURT: Between whom and whom?

MR. KLEINBARD: Between Nabcor and Midtown. Both orally and in writing. In other words he took the oral deposition so he knows the story according to the Midtown Chevrolet people as to what happened to these cars and we also produced every piece of paper that we have.

The orders, the letters, that even antidated our taking over the dealership, invoices, letters cancelling and I forget -- and a few other letters that went back and forth. Letters of inquiry. Because we stumbled upon these invoices which had been placed there by a former employee of Don Allen Chevrolet about which Midtown Chevrolet knew nothing when they took over.

So it took a little while to discover what these ten orders were about. When we found out what they were about, we honored that commitment. At the same price. And then ultimately eight of the cars were not ordered.

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But the only point I am getting at is that the examinations of the other witnesses and this witness to me demonstrate as I say beyond any doubt that what you have here is really a modest factual case, and if Mr. Person wants more documentation than this, and I agree with you this is the guts of the case as far as he is concerned, certainly on the boycott issue, if he wants to know an individual who refused an order, there may be some further documentation that he can produce, since he knows what dealership is involved, he can ask the dealer.

The dealer may have some file.

What I am thinking is this: It is abstract to me to a certain extent but I could conceive of a situation where Mr. Person takes the deposition of the Don Allen people and gets a certain version of the facts.

Secondly, General Motors produces all the files it has with respect to these cars and this incident. And still there would be relevant information out of the mouths of some General Motors people that isn't contained either in the deposition of the Don Allen or in the documents.

Now, that is what -- it is that kind of a gap that I think there is a legitimate desire to fill.

Maybe it isn't legitimate. Maybe the matter is so clear from the Don Allen thing that there is nothing left.

But right now sitting here I can't say that.

MR. KLEINBARD: I am saying in that particular incident,your Honor, there is nobody else that I can produce to fill any particular gap.

MR. PERSON: Your Honor,may I add something at this point?

Today the gap was filled in. I took the deposition of the New York Regional Fleet Manager for GM who testified that he talked at about the time of this incident with the head of Midtown Chevrolet's Fleet Department.

THE COURT: What did he say in the talk?

MR. PERSON: He said that he had talked with the Midtown Fleet Manager about whether he should carry out the orders that Nabcor had placed.

Now, that is the kind of contact that documents and --

MR. KLEINBARD: And he said honor them.

MR. PERSON: But this is something Midtown never told us about during the deposition. They never had any knowledge of contact with GM. Now they find out, today, there was contact on that specific incident with the head of the fleet section in New York.

THE COURT: Mr. Person, I think that you are

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entitled within reason -- I am going to say within reason a lot of times because I think we are getting beyond reason on the discovery in this case -- but I think youare entitled within reason to pursue the problem areas you consider are problems, and on the Don Allen situation without knowing a lot about it I would assume that you could pursue it by taking the deposition of the Don Allen people, taking a deposition or two of somebody at General Motors who knows about it and get the documents.

But that does not mean that for each and every one of 600 orders General Motors should just lay out all the information they have in an interrogatory answer. I don't think it is going to accomplish anything.

And I wish -- maybe you have later on, maybe you have somewhere in these interrogatories, maybe they haven't objected to it but it seems to me that if you could bring yourself to focus and reasonably narrow your discovery demands so that you ask for something you really need about a particular transaction, you are going to get all the help I can possibly give you.

MR. PERSON: Your Honor, if they can tell me who in the corporation has knowledge about Nabcor it would be easier than having me depose somebody whose name appears on a docjment and then finding out, oh, I don't know anything.

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THE COURT: Of course.

MR. PERSON: That is what I am trying to get through the interrogatories.

THE COURT: But this doesn't get it. This is the biggest, you know, dragnet that you can possibly have, and I don't blame you for trying but it just -- I just can't permit it. Now you want to try to get either in negotiation or in discovery names of specific limited numbers of people at GM that know about Nabcor or dealt with Nabcor.

MR. PERSON: That is what I am trying to find out.

THE COURT: But I don't think you are finding it out this way. That is the trouble. So I would, with some reluctance, I would at least for now strike Interrogatory No. 8 and ask you, Mr. Person, unless it is covered in other interrogatories, to try to figure out an interrogatory addressed to GM or two or three of them that will ask specific questions about specific problems, transactions that you don't know -- where you don't have the information already. That is the best I can do sitting right here. All right, now, to the extent that it is covered in depositions, don't ask them to repeat it. It just doesn't do any good.

Now, interrogatory No. 9, I guess we have

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covered that.

MR. KLEINBARD: We have covered that already, your Honor.

THE COURT: Now 10 I don't think I have covered.

MR. KLEINBARD: That is correct.

THE COURT: That I will -- let me ask you, Mr. Kleinbard, does GM have any agreements about indemnification except possibly insurance? If they did, if you had agreed to indemnify some specific Pontiac dealer or something I suppose it could be relevant.

MR. KLEINBARD: We have no such agreements, your Honor.

THE COURT: Well, I would assume basically the answer to this is no and if --

MR. KLEINBARD: Well, the reason I can't say a simple no, I must give you the whole story, we do do a lot of multi -- we are kind of a coordinating counsel for a large number of defendants and they do from time to time, not nearly often enough, reimburse us for their share of the expense. And so this interrogatory is so broad that I can't give a simple no.

THE COURT: Let us elminate what I would call the normal and necessary coordination and work saving

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among counsel which everybody knows exists. Now aside from that --

MR. KLEINBARD: Otherwise I couldn't give a simple no.

THE COURT: All right, well, that is really no problem. So the answer is no with the qualification you have mentioned.

Now I think the next one we haven't covered is 13.

I will strike that. It seems to me it has no relevance at all except possibly in 14, which is dismissed.

MR. PERSON: Your Honor, thatrelates to a claim that we made that GM personnel in the Dealer Division in Philadelphia went into a meeting of dealers and told them what amoutn of advertising was placed by them in the local Philadelphia papers and that as a result they should bring pressure on the paper to refuse Nabcor advertising.

THE COURT: Say that again.

MR. PERSON: That a public relations firm hired by Buick went in with statistics to a meeting of Buick dealers --

THE COURT: Who went in?

MR. PERSON: Cox & Tanz, a public relations firm hired by -- they went into a meeting of dealers in the

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Buick Philadelphia zone and told the dealers what statistics they had about newspaper advertising by these dealers with a suggestion that they bring pressure on the paper to refuse Nabcor and Nabcor franchisee advertising.

THE COURT: I am just not with you.

MR. PERSON: They wanted to bring pressure, this firm, Xox & Tanx --

THE COURT: And they were working for who?

MR. PERSON: Buick Division.

THE COURT: They went to who?

MR. PERSON: A council of dealers that sell Buicks.

THE COURT: And said what?

MR. PERSON: And told them -- gave them the statistics they had recieved, I don't know from Buick or from wherever, about the volume of advertising of these same dealers in the local newspapers in Philadelphia with a suggestion that they bring pressure on the paper to refuse Nabcor advertising because of the volume of business these franchise --

THE COURT: In other words, they tried to exercise leverage?

MR. PERSON: That is right.

THE COURT: Who is the source of this information?

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MR. PERSON: I don't have his name with me but a person who told us that he was told by the Cox & Tanx people who went there.

THE COURT: And have you followed that up?

MR. PERSON: We are going to depose the people.

THE COURT: Well, now, look, this is --

MR. PERSON: It may be more than just this one instance.

THE COURT: All right, but look.

This seems to me as being so broad, it is so lacking in any focus on the issue. I couldn't have -- if I would have sat and tried to think for five hours of what you were driving at in this I couldn't have done it.

MR. PERSON: But I am not trying to gear the question so they will understand what I am doing it, I am trying to get information so I can try to uncover a conspiracy.

THE COURT: You don't need to.

This asks to have an identification and description of all statistics supplied by your personnel to any of your franchisees, any automobile dealer association or any other person on the particular amount of advertising placed by any dealer associations or any of your franchisees in any newspapers and identify each of your personnel who supplied the statistics and state the identification of each such communication.

Now, it is conceivable that those kinds of statistics could be supplied for completely innocent reasons and you could get all kinds of answers and information in response to this and you wouldn't know anything more than you do standing here right now.

And I am going to strike interrogatory 13 because if you have the interrogatory focused on the problem then ask it, but not this kind of --

MR. PERSON: But, your Honor, I am trying to uncover incidents that I am not aware of.

THE COURT: But you are not going to uncover it this way. It simply calls for too much. I think you could conceive of asking for, are there instances where something happened of a specific nature.

Now, you say well, I don't want to give General Motors a clue to where I am asking about but you are going to have to.

MR. PERSON: If I limit ti to Nabcor I know what the answer is going to be. Of course not, we never sent anyone in there to deal with Nabcor.

THE COURT: You can figure it out there is a happy medium. I am not going to have this. 13 is

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stricken.

MR. KLEINBARD: We agreed to do 14, your Honor

THE COURT: Now, what is the next interrogatory that you object to?

MR. KLEINBARD: You struck 15 so the next one woul be 16.

THE COURT: All right. What is the problemwith that?

MR. KLEINBARD: Well, the interrogatory 14, it is basically burden, your Honor, it identifies some 96 people and we said we would identify who they were. He also wants to know who their secretaries were and it covers over a ten-year period.

THE COURT: Stricken. Absolutely. It is just impossible.

Now what is the next thing you objected to?

MR. KLEINBARD: Well, on 17 he is asking for all kinds of information with respect to each of our dealer franchisees named as a defendant or a co-conspirator. And he asks the exact same information of the defendants --

THE COURT: I will sustain the objection.

MR. KLEINBARD: And they are far better qualified to do it than we are.

THE COURT: As stated I sustain the objection to that interrogatory.

MR. PERSON: Which interrogatory, your Honor.

THE COURT: This is 17. And it doesn't mean that in the subject matter of these interrogatories there couldn't be some specific question which would be relevant to the case but I am sustaining the objection to 17 as now stated.

MR. PERSON: You know, your Honor, we produced that same information to them. It wasn't irrelevant when they asked it of me.

THE COURT: Maybe you should have objected. I don't mean GM was -- if somebody had come in about their discovery or objected to some of the questions or even the deposition questions I might have sustained your objections. But I can't judge your interrogatories by discovery of GM that I haven't seen.

Now 18.

MR. KLEINBARD: 18, your Honor, as far as I can see is totally irrelevant. It asks for information concerning the financial relationship between GM, GMAC, First National City and some 22 banks. The way banks is defined it is a prefatory definition section.

THE COURT: Just a second. Objection sustained.

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What is the next one?

MR. PERSON: Your Honor, I would like to state for the record here since I am going to probably be preparing an appeal on this point.

THE COURT: All right.

MR. PERSON: That we have alleged in the complaint that there are compensating balances which are part of the reason why First National City and other banks refuse to give financing to Nabcor. I am pursuing that through interrogatories, I am trying to pursue it through depositions. It certainly is part of the agreement that we have alleged between City Bank, otherbanks, GM, and the others and I just want to put --

THE COURT: I assume that GM have lots of bank accounts and --

MR. KLEINBARD: Used to.

THE COURT: Wait, no, seriously. I assume that there were many banking relationships by General Motors and my problem here, Mr. Person, is that you have asked about every banking relationship, and if there is a particular banking relationship that you are worried about in a town, or involving a bank that denied financing to one of the plaintiffs, then we might get somewhere.

MR. PERSON: Each of these banks I named has either denied financing to us or has a member of GM on the board of directors.

That was the reason for putting those banks in.

THE COURT: Has either what in?

MR. PERSON: Denied financing to Nabcor.

THE OURT: Or what in?

MR. PERSON: Or has a GM director on their board of directors.

THE COURT: Well? So the latter category. What has that to do with this case?

MR. PERSON: The problem is that none of the banks in the country accept the one small bank, Cinnaminson Bank in New Jersey would give them customers financing Nabcor. And we allege in order to protect the bank from losing the interest free deposits of the manufacturers we have good reason to believe that that is the case and that certainly is a very important point in the case, your Honor.

Where is the definition of the banks?

MR. PERSON: At the front. But I am willing to limit this to First National City Bank since it is the remaining defendant in this lawsuit.

MR. KLEINBARD: On that he has taken, I think it was 13 depositions of First National City Bank.

concerning it. Mr. Person never confronted him with the fact that there ever was a discrepancy between his testimony and the interrogatory. He preferred to stay on the fringe of it and ask questions about compensating balance and things like that.

THE COURT: The thing is a compensating balance we are not interested in per say, Mr. Person. It is only circumstantial evidence of a conspiracy, or maybe even of a motive for a conspiracy. It is not proof of a high order.

MR. PERSON: But it is --

THE COURT: Just a minute.

Now it seems to me that before you are entitled to get facts about compensating balances which are normal business relationships, you have got to have some, at least some smoke to take us to the possibility of some fire.

MR. PERSON: Your Honor, you know one problem is that there is only one side that you listen to then I have my side. My side is not getting heard. Our side is a very simple side.

We made at least two requests for financing from City Bank. The first request which of course wasn't told to you was denied before any so-called derogatory